

INDEX.

- PAGE
- ACCOUNTING.** See **Contracts**, 1; **Equity**, 3, 7-17; **Patents for Inventions**, 1, 2.
- ACQUIESCENCE.** See **Boundaries; Principal and Agent**, 2.
- ACTIONS AND DEFENSES.** See particular titles.
- ACTS OF CONGRESS.** See Table at front of volume.
- ADMINISTRATION.** See **Indians; Taxation**, II; III, 1, 2.
 Action on bond of life tenant to secure remainder interest.
 See **Jurisdiction**, V, 7.
- ADMINISTRATIVE DECISIONS.** See **Claims**, 3; **Constitutional Law**, I, 3; **Customs Law**, 2, 4; **Interstate Commerce Acts**, 1, 4; **Public Lands**, I; II, 4, 8-11.
- ADMIRALTY.** See **Shipping Board**.
1. *Jurisdiction of District Court; Shipping Board Act.* Libel of vessel requisitioned by United States and operated through agents of Shipping Board in coastwise trade. *The Lake Monroe*. 246
 2. *Shipping Board Act; § 9.* "Purchased, chartered, or leased," covers contract for temporary use of vessel or its services not amounting to a demise. *Id.*
 3. *Id. Merchant Vessel.* Vessel employed "solely as a merchant vessel," though assigned to New England coal trade when Government rationing coal supply as war measure. *Id.*
 4. *New York Harbor; Dumping.* Vessel violating Act of 1888 directly liable for same pecuniary penalties as individuals; enforced summarily by libel, without awaiting criminal proceedings against individuals. *The Scow "6-S"*. 269
 5. *Id. Penalties; Enforcement.* No constitutional or other reason why unliquidated fine may not be enforced against vessel in admiralty. *Id.*

ADMIRALTY—Continued.

PAGE

6. *Id.* *Jurisdiction of District Court*, conferred by Act of 1888, whether or not regarded as proceeding for enforcement of penalty or forfeiture within Jud. Code, § 24. *Id.*

ADMISSIONS. See **Pleading**, 4.

ADVERSE POSSESSION. See **Public Lands**, II, 7, 9, 11.

AGENCY. See **Contracts**, 1; **Insurance**; **Principal and Agent**; **Public Lands**, II, 3; **Taxation**, I, 1.

AGRICULTURE, DEPARTMENT OF. See **Constitutional Law**, III, 4.

ALASKA. See **Public Lands**, I.

ALIENATION, RESTRAINT ON. See **Indians**.

ALIEN PROPERTY CUSTODIAN. See **Criminal Law**, 4.

ALIENS. See **Criminal Law**, 4; **Taxation**, I.

ALLOTMENTS. See **Indians**.

AMENDMENT. See **Pleading**, 5.

ANCILLARY JURISDICTION. See **Jurisdiction**, I, 2; V, 4.

ANNULMENT. See **Contracts**, 4.

ANTI-TRUST ACT:

1. *Fixing Prices.* In absence of intent to maintain monopoly, manufacturer may announce in advance resale prices and refuse to deal with dealers who do not conform. *United States v. Colgate & Co.* 300

2. *Id.* *Indictment Construed* as not charging agreements with dealers. *Id.*

APPEAL AND ERROR. See **Jurisdiction**; **Procedure**.

APPEARANCE. See **Bankruptcy Act**, 5; **Jurisdiction**, V, 12-17.

APPROPRIATIONS. See **Claims**, 5.

ARIZONA:

Employers' Liability Act, sustained. <i>Arizona Employers' Liability Cases</i>	PAGE 400
--	-------------

ARKANSAS. See **Boundaries.**

ARMY. See **Criminal Law**, 10, 12.

Claims for lost property by officers and men. See **Claims**, 3, 4.

ASSESSMENTS. See **Equity**, 3; **Principal and Agent**; **Taxation**, III.

Damages. See **Eminent Domain**, 2.

ASSIGNMENTS. See **Jurisdiction**, V, 7; **Patents for Inventions**, 1, 2.

Of remainder interest carries with it *pro tanto* security given by life tenant to secure remaindermen. *Brainerd &c. Quarry Co. v. Brice* 229

ASSIGNMENTS OF ERROR. See **Judgments**, 5; **Procedure**, II.

ASSUMPTION OF RISK. See **Constitutional Law**, XI, 5 *et seq.*

ATTORNEYS. See **Interstate Commerce Acts**, 2.

Power of Congress, in appropriating for payment of Civil War Claim, to restrict amount payable to attorneys as fee for services in securing appropriation, under preëxisting valid contract. *Capital Trust Co. v. Calhoun* 208

AVULSION. See **Boundaries**, 3.

BAIL.

Retention of 1 per cent. of cash bail deposit as clerk's fees under Rev. Stats., § 828, does not interfere with constitutional rights. *Berkman v. United States* 114

BAILMENT. See **Contracts**, 2.

BANKRUPTCY ACT:

1. *Jurisdiction of District Court.* In suit by trustee to set aside preferences, jurisdiction depends on allegations of bill and not proof. *Flanders v. Coleman* 223

BANKRUPTCY ACT—*Continued.*

PAGE

2. *Id.* Where bill makes case within jurisdiction, court must determine merits. *Id.*
3. *Id.* *Preferences, § 60b, and Transfers, §§ 67e, 70e.* Suit to set aside, brought by trustee against third party without his consent. *Id.*
4. *Id.* *Scope of Review.* Whether surrender of real property and delivery of rent notes amounted to conveyances under state law, *held* matters appertaining to merits not to be considered on direct appeal. *Id.*
5. *Id.* *Ancillary Jurisdiction to Enjoin Action in State Court; Partners.* Where District Court approved composition agreement relieving one claiming to be special partner upon giving up scheduled claim and assuming certain obligations, and dismissed petitions to have him declared general partner and adjudged bankrupt, *held* that decree did not estop strangers from prosecuting action for fraud in court of another State to hold him as general partner of bankrupts; and that District Court had no jurisdiction ancillary to bankruptcy decree to enjoin such action. *Pell v. McCabe* . . . 573

BANKS AND BANKING. See **Franchises**, 5; **National Banks**; **Principal and Agent**, 1.

BENEFITS. See **Equity**, 3; **Taxation**, III, 5.

BILL OF LADING. See **Constitutional Law**, III, 2, 3; **Interstate Commerce Acts**, 12-16.

BILL OF REVIEW. See **Procedure**, VIII, 1.

BIRDS, MIGRATORY. See **Constitutional Law**, III, 4.

BOARD OF GENERAL APPRAISERS. See **Customs Law**.

BONA FIDE OCCUPANT. See **Public Lands**, II, 11.

BONDS. See **Bail**.

1. Ordinarily regarded as "property;" situs for taxation at place other than owner's domicile. *De Ganay v. Lederer* . . . 376
2. Action against city for accounting and failure to sell lands and apply proceeds to satisfaction of improvement certificates. *Benedict v. City of New York* 321

BONDS—Continued

PAGE

3. Assignment of remainder interest carries with it *pro tanto* obligation of bond of life tenant to secure remaindermen. *Brainerd &c. Quarry Co. v. Brice* 229

BOOKS. See **Evidence**, 1.

BOUNDARIES. See **Jurisdiction**, III, 18, 19.

1. *Arkansas and Mississippi*. Middle of main channel of navigation of Mississippi River; none other established by practice or acquiescence. *Arkansas v. Mississippi* 39
2. *Id.* No state compact under Joint Resolution of Congress of 1909. *Id.*
3. *Id. Avulsion*. State boundary in case of. *Id.*
4. *Id.* Commission to locate line. *Id.*

BRIEFS.

Scandalous matter stricken from files of this court. *Washington Post Co. v. Chaloner* 290

BROKERS. See **Insurance**.

BURDEN OF PROOF. See **Evidence**, 5.

CABLE LINES. See **Constitutional Law**, VII, 5.

CARMACK AMENDMENT. See **Interstate Commerce Acts**, 12, 13.

CARRIERS. See **Employers' Liability Act**; **Federal Control Act**; **Interstate Commerce Acts**; **Mail Cars**.

Regulations affecting interstate commerce. See **Constitutional Law**, III, 7-10.

Federal Control Act; intrastate rates. See *id.*, VII, 1, 2.

Protecting interstate bills of lading. See *id.*, III, 2, 3.

Liability under live stock contract; written claim of loss; when transportation ends. See **Interstate Commerce Acts**, 14, 15.

Lien for freight, and duty of consignee to pay lawful rate. See **Interstate Commerce Acts**, 7-11.

Formula in rate case. See **Procedure VIII**, 14.

1. *Failure to Deliver*; *Misdescription of Goods*; *Rates*. Under

CARRIERS—Continued.

PAGE

interstate bill of lading, *held* that innocent misdescription of goods, placing them in class entitled to lower rate under filed schedules, imposed obligation to pay freight according to true character, and did not affect liability for failure to deliver. *New York Cent. R. R. v. Goldberg*. 85

2. *Intrastate Rates*. All parts of system within State embraced in testing adequacy. *Groesbeck v. Duluth &c. Ry.*.. 607

3. *Id. Unremunerative lines; Sleeping Car Service*. Not to be excluded or treated as separate operations. *Id.*

4. *Id. Allocation of Expenses*. Formula to be adopted for dividing expenses common to freight and passenger service and not capable of direct allocation is question of fact. *Id.*

5. *Tracks; Public Safety*. Contract and property rights in respect of operation in public street subject to regulation to secure public safety. *Denver & Rio Grande R. R. v. Denver*. 241

6. *Crossings; Safety Devices*. Railroad may be compelled to share expense of installing and maintaining devices when junior road crosses its tracks. *Northern Pac. Ry. v. Puget Sound Ry.*. 332

CARS:

Distribution. See **Interstate Commerce Acts**, 1-5.

Mails. See **Mail Cars**.

CERTIORARI. See **Jurisdiction**, III, 4, 13, 17-20.

CHALLENGES. See **Criminal Law**, 7.

CHARTERS.

Tax exemptions. See **Franchises**.

Vessels. See **Shipping Board**.

CHICKASAW INDIANS. See **Indians**, 10, 11.

CHOCTAW INDIANS. See **Indians**, 10, 11.

CHOSE IN ACTION. See **Jurisdiction**, V, 7.

CIRCUIT COURT OF APPEALS. See **Jurisdiction**, III (2); IV; **Procedure**, IX, 3.

CITIES. See **Municipalities; Ordinances.**

PAGE

CITIZENS. See **Constitutional Law**, VI; XI, 17,(5).

Diverse citizenship. See **Jurisdiction**, III, 3; V, 7, 8, 12-17.

CIVIL RIGHTS. See **Constitutional Law**, XI, 38.

CIVIL WAR. See **Claims**, 5.

CLAIMS.

Of patent. See **Patents for Inventions**, 4, 9-11.

Limitations, in Court of Claims. See **Taxation**, II, 3.

Time for presenting, for refund of inheritance taxes. See **Taxation**, II.

1. *Taking of Land.* Discharge of projectiles from fort over private land not a taking. *Portsmouth Co. v. United States* 1

2. *Naval Vessels; Bailment of Private Property.* Under Rev. Stats., § 1624, and § 1020, Navy Regulations, deposit of gold on war vessel creates no contract with United States. *Cartas v. United States* 545

3. *Military Officers.* Under Act of 1885, claims for property lost in military service are exclusively within jurisdiction of Treasury Department and not within jurisdiction of Court of Claims. *United States v. Babcock*. 328

4. *Id. Limitations.* Under Acts of 1883 and 1888, right to present claims under § 3482, Rev. Stats., as amended, expired in 1891. *Id.*

5. *Contract for Attorney's Fees.* Power of Congress, in appropriating for payment of Civil War claim, to restrict amount payable to attorneys for services in securing the appropriation, under a preëxisting valid contract. *Capital Trust Co. v. Calhoun*. 208

6. *Patents.* Unliquidated claim against United States, under Act of 1910, for infringement of patent, not assignable with patent. *Brothers v. United States* 88

CLERK, DISTRICT COURT. See **Fees.**

CLERK, SUPREME COURT. See **Procedure**, III.

COAL LANDS. See **Public Lands**, I.

- COLOR OF TITLE.** See **Public Lands**, II, 6, 7. PAGE
- COMBINATIONS.** See **Anti-Trust Act**.
- COMITY.**
 Questions of comity not before this court on direct appeal involving jurisdiction of District Court. *Public Service Co. v. Corboy* 153
- COMMERCE.** See **Constitutional Law**, III; **Interstate Commerce Acts**.
- COMMISSIONER:**
 To locate boundary. See **Boundaries**, 4.
 Findings, in removal. See **Jurisdiction**, III, 6.
- COMMISSIONER OF INTERNAL REVENUE.** See **Taxation**, II.
- COMMON CARRIERS.** See **Carriers; Employers' Liability Act; Federal Control Act; Interstate Commerce Acts; Mail Cars**.
- COMMON LAW.** See **Constitutional Law**, XI, 5; **National Banks**.
- COMPACT, OF STATES.** See **Boundaries**, 2.
- COMPETENCY.** See **Indians**.
- COMPOSITION.** See **Bankruptcy Act**, 5.
- CONDEMNATION.** See **Eminent Domain; Jurisdiction**, II, 1; VII.
- CONFORMITY ACT.** See **Jurisdiction**, III, 2; **Pleading**, 6; **Procedure**, VII.
- CONGRESS.**
 For acts cited. See Table at front of volume.
 For powers. See **Constitutional Law**.
 Reports of committees. See **Statutes**, 5.
- CONSPIRACY.** See **Criminal Law**, 1, 12.

CONSTITUTIONAL LAW:

PAGE

- I. Division of Powers, p. 689.
 - II. Judicial Power, p. 689.
 - III. Commerce Clause, p. 690.
 - IV. Contract Clause, p. 691.
 - V. Full Faith and Credit, p. 691.
 - VI. Privileges and Immunities, p. 691.
 - VII. War Power, p. 692.
 - VIII. Fifth Amendment, p. 692.
 - IX. Sixth Amendment, p. 693.
 - X. Eighth Amendment, p. 693.
 - XI. Fourteenth Amendment:
 - (1) General, p. 693.
 - (2) Notice and Hearing, p. 693.
 - (3) Liberty and Property; Police Power; Eminent Domain, p. 694.
 - (4) Equal Protection of the Laws, p. 696.
 - (5) Privileges and Immunities, p. 697.
 - XII. Who May Question Constitutionality of Statutes, p. 697.
- See **Jurisdiction; Procedure.**
Elections. See **Witnesses.**
Post offices and post roads. See III, 6, 9, 10, *infra*.
- I. Division of Powers.** See III, 4; VII, *infra*.
1. *State and Federal.* Employment of state court as a federal agency. *Parker v. Richard*. 235
 2. *Legislative, Executive and Judicial.* Jud. Code, § 265, forbidding injunctions to stay proceedings in state court, refers only to proceedings in which final judgment or order has not been entered and in which power exerted is judicial, as distinguished by Constitution from powers legislative and executive. *Public Service Co. v. Corboy* 153
 3. *Id.* The judiciary cannot call in question the motives or expediency of discretionary acts of the President. *Dakota Cent. Tel. Co. v. South Dakota*. 163
- II. Judicial Power.** See **Jurisdiction, I.**
1. Suit to enjoin interference with cable lines as in excess of power given by Joint Resolution of July 16, 1918, becomes

CONSTITUTIONAL LAW—Continued.

PAGE

- moot upon restoration of lines to owners, and apprehension that alleged wrongs may be repeated and revenues claimed by United States does not preserve justiciable quality of case. *Commercial Cable Co. v. Burleson* 360
2. Want of power in state commission to consider constitutionality of law which it seeks to enforce can not limit right of party affected to raise question in state courts. *Pennsylvania R. R. v. Public Service Comm.* 566
3. There is no constitutional or other reason why an unliquidated fine may not be enforced against a vessel in admiralty. *The Scow "6-S"* 269

III. Commerce Clause.

1. *Protecting Commerce.* Power of Congress to deal with acts not in themselves interstate commerce but which obstruct or otherwise injuriously affect it. *United States v. Ferger* 199
2. *Id. Bills of Lading.* Power to punish conspiracy to forge and utter or the forgery and utterance of bills for fictitious shipments. *Id.* See also p. 207.
3. *Id. Bills of lading in interstate commerce are instrumentalities of that commerce. Id.*
4. *Migratory Bird Law.* South Dakota law forbidding shipment, not inconsistent with federal act and regulations of Department of Agriculture, which merely prohibit destruction and prescribe closed seasons. *Carey v. South Dakota* . . 118
5. *License Tax Upon Manufacture* within city, when computed on sales of goods manufactured there under license, but removed, and afterwards sold, beyond State, does not burden interstate commerce. *American Mfg. Co. v. St. Louis.* 459
6. *Id. Telegraph Companies.* Company which has accepted Act of 1866 and is engaged in interstate business held subject to city tax on poles and wires erected in streets under franchise ordinance. *Mackay Tel. Co. v. Little Rock.* 94
7. *Regulating Railroad Tracks.* Ordinance which makes no discrimination against interstate commerce, and affects it only incidentally and indirectly, not objectionable. *Denver & Rio Grande R. R. v. Denver* 241

CONSTITUTIONAL LAW—Continued.

PAGE

8. *Railroads; Condemnation.* Parts of interstate right of way and bridges over navigable waters may be condemned for use of telegraph company under state law. *Louis. & Nash. R. R. v. Western Union Tel. Co.* 363

9. *Id. Post-Roads Act 1866.* Waived objection to such exercise of state sovereignty as interference with interstate commerce. *Id.*

10. *Mail Cars.* State law regulating equipment, etc., of end cars, as applied to interstate train, *held* to invade field occupied by Congress through regulations of Postmaster General, Safety Appliance Act and regulations of Interstate Commerce Commission. *Pennsylvania R. R. v. Public Service Comm.* 566

IV. Contract Clause.

1. *Rights of Municipalities.* Does not restrain power of States to withdraw from city authority to regulate gas rates. *Pawhuska v. Pawhuska Oil Co.* 394

2. *State Bank Charter.* Provisions not inconsistent with exercise of general power of State to cause affairs to be examined and reported on and to exact assessment for maintenance of state banking department. *Bank of Oxford v. Love* 603

3. *Railroad Tracks; Public Safety.* Requiring removal of a track, constructed under an ordinance grant, where it crossed thoroughfare. *Denver & Rio Grande R. R. v. Denver* 241

V. Full Faith and Credit.

Not denied to laws of State of incorporation of insurance company by rule of another State that persons applying for policies and receiving and transmitting premiums on local risks shall be deemed its agents. *American Fire Ins. Co. v. King Lumber Co.* 2

VI. Privileges and Immunities. See XI, 17, (5), *infra*.

1. *Nature of Rights.* Provision intended to prevent discrimination by States against citizens of other States in respect of fundamental privileges of citizenship. *Maxwell v. Bugbee.* 525

2. *Id. Inheritance Tax.* Does not prevent state tax on privilege of inheritance from nonresident decedent of property within State. *Id.*

CONSTITUTIONAL LAW—Continued.

PAGE

3. *Id. Resident and Citizen.* *Quere:* Whether clause applies when discrimination in state inheritance tax law is based not on citizenship but on residence or nonresidence of decedent? *Id.*
4. *Cash Bail; Clerk's Fees.* Retention by clerk of percentage of deposit does not violate this clause. *Berkman v. United States.* 114

VII. War Power.

1. *Railroads; Intrastate Rates.* Plenary possession and control of railroads assumed by Federal Government under Federal Control Act, including power of President to fix, and of Interstate Commerce Commission to consider, intrastate rates. *Northern Pac. Ry. v. North Dakota.* 135
2. *Id. State Police Power.* No room for a presumption, in construing act, that powers of States, respecting such rates, was to continue. *Id.*
3. *Telephones and Telegraphs.* Joint Resolution of 1918, authorizing President to take possession and control of and to operate, within war power. *Dakota Cent. Tel. Co. v. South Dakota* 163
Kansas v. Burleson. 188
Burleson v. Dempcy. 191
Macleod v. New England Tel. Co. 195
4. *Id. Exercise of Power; Motive.* Whether exercise justified by conditions or actuated by proper motives, not within cognizance of judiciary. *Id.*
5. *Cable Lines.* Suit to enjoin interference as in excess of power given by Joint Resolution of July 16, 1918; becomes moot upon restoration of lines to owners. *Commercial Cable Co. v. Burleson.* 360

VIII. Fifth Amendment. See Eminent Domain, 1.

1. *Grand Jury.* Power of inquisition, scope of inquiry, and duty of witnesses to attend and answer. *Blair v. United States.* 273
2. *Id. Witnesses.* May not refuse to answer upon ground that court and jury are without jurisdiction over offense under investigation. *Id.*

CONSTITUTIONAL LAW—Continued.

PAGE

3. *Self-Incrimination*. Matter of defense at trial, which cannot be anticipated in removal proceedings. *Rumely v. McCarthy* 283
4. *Due Process; Liberty of Contract*. Power of Congress, in appropriating for payment of Civil War claim, to restrict amount of it payable to attorneys as a fee for services in securing the appropriation, under a preëxisting valid contract. *Capital Trust Co. v. Calhoun* 208
5. *Cash Bail and Clerk's Fees*. Retention by clerk as compensation of percentage of deposit of cash bail in criminal case does not violate Amendment. *Berkman v. United States* 114

IX. Sixth Amendment.

1. *Peremptory Challenges*. Constitution does not require Congress to grant in criminal cases; and Jud. Code, § 287, providing that all of several defendants shall be treated as one for purposes of such challenges does not infringe right to impartial jury. *Stilson v. United States*. 583
2. *Removal Proceedings*. Where defendant indicted in two districts, it is discretionary with court of one to order removal to the other district under later indictment. *Rumely v. McCarthy*. 283

X. Eighth Amendment.

- Excessive Bail*. Retention by clerk as compensation of percentage of deposit of cash bail in criminal case does not violate Amendment. *Berkman v. United States*. 114

XI. Fourteenth Amendment.

(1) *General*.

1. Foreign fire insurance company bound by law of State where it transacts business. *American Fire Ins. Co. v. King Lumber Co.* 2

(2) *Notice and Hearing*. See 28, *infra*.

2. *Improvement Districts; Assessment*. Notice to owners of formation and bounds not necessary when established by legislative authority; *contra*, when established by administrative or quasi-judicial authority. *Hancock v. Muskogee* . . 454

3. *Id. Apportionment*. No necessity for hearing when mode prescribed by legislature. *Id.*

CONSTITUTIONAL LAW—Continued.

PAGE

(3) *Liberty and Property; Police Power; Eminent Domain.*
See 36, *infra*.

4. *State Inheritance Tax*, on succession to local property of nonresident decedent, measured by ratio in value to entire estate, including property in other States, is not a tax on property beyond jurisdiction. *Maxwell v. Bugbee* 525

5. *Arizona Employers' Liability Law; Hazardous Occupations.* Liability in compensatory damages, without regard to fault, for injury due to conditions of occupation but not caused by employee's negligence. *Arizona Employers' Liability Cases.* 400

6. *Id. Public Welfare.* As a regulation to prevent employees from becoming burden on public, law is not arbitrary or unreasonable. *Id.*

7. *Id. Jury.* Issues of fact and compensatory damages may be left to jury. *Id.*

8. *Id. Measure of Compensation.* Methods of determining and manner of distribution are questions for State. *Id.*

9. *Id. Workmen's Compensation Law; Election.* Allowing election between restricted recovery under compensation law where employee guilty of contributory negligence, and full compensatory damages under Liability Act where he is not, is consistent with due process and equal protection. *Id.*

10. *Id. Risk of Enterprise.* Voluntary conduct may be put at peril of those pursuing it. *Id.*

11. *Id. Safety of Employees.* Holding employer liable for accidents to secure safety is a constitutional object of legislation. *Id.*

12. *Id. Pain and Mutilation; Burden of Cost.* In allowing damages, law throws cost on employer, and, indirectly, on public. *Id.*

13. *Id. Excessive Verdicts.* Liability limited to conscientious valuation of loss; presumed juries and courts will confine it accordingly. *Id.*

14. *Workmen's Compensation Law; Disfigurement.* New York law providing awards for disfigurement, not arbitrary. *New York Cent. R. R. v. Bianc.* 596

CONSTITUTIONAL LAW—Continued.

PAGE

15. *Id. Earning Power.* Compensation of workmen injured in hazardous industries need not be based exclusively on loss of earning power. *Id.*

16. *Id. Payment of Compensation.* Whether in combination with or independently of award for inability to work, and whether in single sum or installments, for State to determine. *Id.*

17. *Foreign Insurance Co.; Agents.* State law may make persons applying for insurance or receiving or transmitting premiums agents of foreign company, despite contrary stipulations in policy. *American Fire Ins. Co. v. King Lumber Co.* 2

18. *License Tax.* Tax on right to manufacture within city, computed on amount of sales of goods so manufactured, is a tax upon business of manufacture within city, and not upon sales. *American Mfg. Co. v. St. Louis* 459

19. *Id. Foreign Corporations.* Such tax when computed on sales of goods manufactured in city, but removed, and afterwards sold, beyond State, does not deprive of property without due process. *Id.*

20. *Id. Testing Constitutionality,* by practical operation and effect. *Id.*

21. *Telegraph Companies; License Tax,* on poles and wires in streets under franchise ordinance, including those on railroad right of way brought within city limits after franchise ordinance accepted. *Mackay Tel. Co. v. Little Rock* 94

22. *Id. Pole Tax,* of fifty cents per pole per year held not unreasonable, though imposed on poles on private property, and railroad right of way as well as in streets. *Id.*

23. *Gas Rate.* Finding that no rate yielding as much as 6 per cent. could be deemed confiscatory disapproved, where 8 per cent. shown as lowest rate on capital in other business and legal rate in State is 7 per cent. *Lincoln Gas Co. v. Lincoln* 256

24. *Id.* Not held confiscatory in absence of actual and timely test of practical operation. *Id.*

25. *Intrastate Passenger Rates; Testing Adequacy.* All parts of system within State should be embraced in computation. *Groesbeck v. Duluth &c. Ry.* 607

CONSTITUTIONAL LAW—*Continued.*

PAGE

26. *Id. Unremunerative Parts; Sleeping Car Service.* Not to be excluded or treated as separate operations. *Id.*
27. *Local Improvement Assessment.* Method of taxing property benefited, and manner of distribution (according to frontage, values or area), within legislative discretion. *Hancock v. Muskogee.* 454
28. *Condemnation.* Assessment of damages and determination of right of condemnation in separate proceedings consistent with due process. *Louis. & Nash. R. R. v. Western Union Tel. Co.* 363
29. *Id. For Telegraph,* existing as well as for new line. *Id.*
30. *Id.* Where for new line, state courts may reserve inquiry into alleged purpose to use it for existing line, in alleged infraction of state law, until use is attempted. *Id.*
31. *Id. On Railroad Right of Way; Judgment,* not void for failure to describe exact location of poles when it provides against interference with railroad and danger to persons or property. *Id.*
32. *Railroad Crossings; Safety Devices.* Railroad not deprived of property by change of law requiring it to share expense where another road crosses its tracks. *Northern Pac. Ry. v. Puget Sound Ry.* 332
33. *Railroad Tracks; Public Safety.* Requiring removal of a track, constructed under an ordinance grant, where it crossed thoroughfare. *Denver & Rio Grande R. R. v. Denver* 241
- (4) *Equal Protection of the Laws.* See 5, 9, 17, 23, 24, *supra.*
34. *Inheritance Tax,* in cases of resident and nonresident decedents measurable in different ways. *Maxwell v. Bugbee* 525
35. *Id.* Question of equal protection must be decided between resident and nonresident decedents as classes, rather than by incidence of tax in particular cases. *Id.*
36. *Arizona Employers' Liability Law.* Confined to compensatory damages, and makes only such discrimination between employer and employee as necessarily arises from their different relations to common undertaking. *Arizona Employers' Liability Cases.* 400
37. *Telegraph Companies; Pole Tax.* That tax sought to be enforced against one company has not been enforced against

CONSTITUTIONAL LAW—*Continued.*

PAGE

others, does not prove denial of equal protection, in absence of arbitrary and intentionally unfair discrimination. *Mackay Tel. Co. v. Little Rock*. 94

(5) *Privileges and Immunities*. See VI; XI, 17, *supra*.

38. *Citizenship, Federal and State*. Distinction recognized; purpose not to transfer to Federal Government protection of civil rights inherent in state citizenship. *Maxwell v. Bugbee* 525

39. *Inheritance Tax*. It does not prevent state tax on privilege of inheritance from nonresident decedent of property within State. *Id.*

40. *Citizens and Residents*. *Quære*: Whether clause applies when discrimination in state inheritance tax law is based not on citizenship but on residence or nonresidence of decedent? *Id.*

XII. Who May Question Constitutionality of Statutes.

1. *Practical Operation and Effect*, determine. *American Mfg. Co. v. St. Louis* 459

2. *Party Affected*. Objection that Arizona Employers' Liability Law may be extended by construction to non-hazardous industries cannot be raised by parties whose industries are hazardous. *Arizona Employers' Liability Cases* 400

3. *Witnesses*, subpoenaed in grand jury investigation of violations of Corrupt Practices Act, may not question power of Congress to enact provisions for regulation of primary elections of candidates for office of United States Senator. *Blair v. United States*. 273

4. *Party Affected*. This court will not pass upon constitutionality of act of Congress when party attacking it not entitled to raise question. *Id.*

CONSTRUCTION. See **Admiralty; Anti-Trust Act; Bankruptcy Act; Claims; Constitutional Law; Contracts; Criminal Law; Customs Law; Equity, 4, 5; Federal Control Act; Franchises; Indians; Interstate Commerce Acts; Judgments; Jurisdiction; Limitations; Mail Cars; National Banks; Patents for Inventions; Public Lands; Shipping Board; Statutes; Taxation; Telephones and Telegraphs.**

Of indictment, not reviewable. See **Jurisdiction, III, 5.**

CONTINUANCE. See **Jurisdiction**, III, 19.

PAGE

CONTRACTS. See **Anti-Trust Act**; **Bonds**, 3; **Evidence**, 6; **Indians**; **Insurance**; **Interstate Commerce Acts**, 7-16; **Patents for Inventions**, 1; **Shipping Board**, 5.

Agreement between States. See **Boundaries**, 2.

Impairment of obligation. See **Constitutional Law**, IV.

Liberty of contract. *Id.*, VIII, 4.

Live stock; written claim of loss; when transportation ended.

See **Interstate Commerce Acts**, 14, 15.

Indispensable parties, in action on joint contract. See **Parties**, 2.

1. *Breach; Damages.* Where owner of all shares of corporation, acting as its secret agent or as equitable owner of its property, contracts to convey this to a common venture, he may recover in his own name the full amount of the depreciation of the property resulting from the repudiation of the contract by the other parties to it, without any preliminary accounting or settlement of the corporate affairs. *Camp v. Gress* 308

2. *United States; Private Bailment on Naval Vessel.* Under Rev. Stats., § 1624, and § 1020, Navy Regulations, deposit of gold on war vessel creates no contract with United States. *Cartas v. United States* 545

3. *For Government Works; Rights of Third Parties.* Provision giving United States right on default to take materials, tools, etc., not applicable, *in invitum*, to property of third party used in the work. *Ball Eng. Co. v. White & Co.* 46

4. *Id. Annulment.* Retention by Government of property of third party engaged in work, with knowledge of claim and without consent, followed by credit to defaulting contractor and lease of property to new contractor, *held* not to imply contractual liability against United States; having taken and used property, new contractor *held* liable for conversion. *Id.*

CONTRIBUTION. See **Equity**, 14-17.

CONTRIBUTORY NEGLIGENCE. See **Constitutional Law**, XI, 5 *et seq.*; **Master and Servant**.

CONTROVERSIES BETWEEN STATES. See **Boundaries**.

CONVERSION. See **Contracts**, 4.

PAGE

CONVEYANCE. See **Bankruptcy Act**, 4; **Indians**, 7, 9-11;
Public Lands, II, 13.

CORPORATIONS. See **Franchises**; **Gas Companies**; **Municipalities**; **National Banks**.

Railroads. See **Federal Control Act**.

Telegraph companies. See **Constitutional Law**, III, 6;
VII, 5; XI, 21, 22, 37; **Eminent Domain**, 2-6; **Telephones and Telegraphs**.

Foreign corporations. See **Taxation**, III, 9.

Foreign fire insurance companies. See **Constitutional Law**,
XI, 1, 17.

National banks; who are shareholders liable to assessment.
See **Principal and Agent**.

Right of minority shareholders to affix trust on new shares
acquired by majority through unfair reorganization. See
Equity, 7-17; **Parties**, 3-5.

Right of shareholder, having contracted, as secret agent of
corporation or equitable owner, to convey its property, to
recover full depreciation due to breach. See **Contracts**, 1.

1. *Certificates of Stock*. Ordinarily regarded as "property;"
situs for taxation at place other than owner's domicile. *De*
Ganay v. Lederer 376

2. *United States as Shareholder; Dividends*. Collection of
dividends on shares owned by United States is assertion of
its right as creditor unaffected by relations as shareholder,
and in suing therefor it acts in governmental capacity.
Ches. & Del. Canal Co. v. United States 123

CORRUPT PRACTICES ACT. See **Witnesses**.

COSTS. See **Procedure**, III; IX, 6.

COURT OF CLAIMS. See **Claims**; **Jurisdiction**, III (4); VI.

Suits to recover unlawful tax; time for presenting claims.

See **Taxation**, II.

Limitations in. See *id.*, II, 3.

COURT OF CUSTOMS APPEALS. See **Customs Law**.

COURTS. See **Admiralty**; **Bankruptcy Act**; **Customs Law**;
Equity; **Instructions**; **Jurisdiction**; **Mandamus**; **Pro-**
cedure.

- CREDITORS.** See **Bankruptcy Act; Corporations, 2.** PAGE
- CREEK INDIANS.** See **Indians, 1-3.**
- CRIMINAL APPEALS ACT.** See **Jurisdiction, III, 5.**
- CRIMINAL LAW.** See **Anti-Trust Act, 2; Bail; Witnesses.**
- Self-incrimination. See **Constitutional Law, VIII, 1-3.**
- Penalties for dumping in New York Harbor. See **Admiralty, 4-6.**
- Review under Criminal Appeals Act. See **Jurisdiction, III, 5.**
1. *Forgery; Bills of Lading.* Congress may punish conspiracy to forge and utter or the forgery and utterance of bills of lading for fictitious shipments in interstate commerce. *United States v. Ferger* 199, 207
 2. *Unlawful Rebates; Elkins Act.* What is "knowingly receiving." *Lehigh Coal & Nav. Co. v. United States* 556
 3. *Self-Incrimination;* matter for defense at trial; does not go to probable cause in removal proceedings. *Rumely v. McCarthy* 283
 4. *Trading-With-Enemy Act; Venue.* Failure to report to Alien Property Custodian is an offense committed in district where office is established. *Id.*
 5. *Removal; Judge's Discretion.* Where defendant indicted in two districts, court of one may order removal to the other district under later indictment. *Id.*
 6. *Severance.* Denial is within discretion of judge. *Stilson v. United States* 583
 7. *Peremptory Challenges.* Jud. Code, § 287, providing that all defendants shall be treated as one for purposes of such challenges does not infringe right to impartial jury. *Id.*
 8. *Instructions; General Knowledge of Jury.* Where jury instructed to consider publications and determine from them and other evidence whether they amounted to violations of Espionage and Draft Acts, related portions of charge, on right to call on their general knowledge, were not objectionable. *Id.*
 9. *Instructions.* District judge not required to analyze or discuss details of evidence. *Id.*

CRIMINAL LAW—Continued.

PAGE

10. *Espionage and Selective Service Acts*; evidence of violation. *Id.*
11. *Indictment; Verdict; Sentence.* Evidence sustaining any one of several counts sustains verdict and judgment of guilty under all, if sentence does not exceed maximum allowable under any one. *Abrams v. United States* 616
12. *Espionage Act; Conspiracy.* Evidence sustaining conviction for uttering, etc., circulars intended to provoke resistance to United States in war and incite strike of workers in ammunition factories. *Id.*
13. *Id. Intent.* Scheme which necessarily involves defeat of war plans held to intend that result, notwithstanding ultimate purpose to prevent interference with Russian Revolution. *Id.*

CUSTOMS LAW:

1. *Reliquidation; Time Limit.* Purpose of Act of 1874, providing that when duties have been liquidated and paid and goods delivered, the entry and settlement shall, after one year, in absence of fraud, etc., be conclusive, was to limit right to reliquidate. *Vitelli & Son v. United States* 355
2. *Fraud; Burden of Proof.* Where collector reliquidates for fraud, no presumption that his action was correct so as to cast onus of disproving fraud upon importer. *Id.*
3. *Id.* Fact that importer pays under protest and appeals to Board of General Appraisers, does not require him to assume burden of disproving fraud. *Id.*
4. *New Trial.* Where Court of Customs Appeals erroneously assumed that collector's action was correct, and cast burden of disproving fraud on importer, case remanded to be tried anew by Board of General Appraisers, without inquiry by this court into adequacy of evidence of fraud. *Id.*

DAMAGES. See **Contracts**, 1; **Eminent Domain**; **Interstate Commerce Acts**, 1-5, 12-14.

Right of shareholder and secret agent of corporation to sue for, in his own name. See **Contracts**, 1.

Penalties. See **Admiralty**, 5, 6.

Arizona Employers' Liability Act, allowing only compensatory damages, benefits only dependents of deceased employee. *Arizona Employers' Liability Cases* 400

- DEATH.** See **Employers' Liability Act; Indians.** PAGE
- DEBTORS.** See **Bankruptcy Act; Corporations, 2.**
- DECEIT.** See **Trade-Marks.**
- DECLARATION.** See **Pleading, 1-3, 5.**
- DECREES.** See **Judgments; Procedure, IX.**
- DEEDS.** See **Bankruptcy Act, 4; Indians, 7, 9-11; Public Lands, II, 13.**
- DEFAMATION.** See **Libel.**
- DELEGATED POWERS.** See **Constitutional Law, I; Shipping Board, 2-4.**
- DEMURRER.** See **Pleading, 4.**
To evidence. See **Pleading, 7-9.**
- DEPOSIT.** See **Claims, 2.**
- DESCENT AND DISTRIBUTION.** See **Indians; Taxation, II; III, 1, 2.**
- DIRECTORS.** See **National Banks.**
- DISCLAIMER.** See **Patents for Inventions, 14.**
- DISCRIMINATION.** See **Interstate Commerce Acts, 1-6.**
- DISMISSAL.** See **Procedure, VI; VIII, 7-9; IX, 6.**
- DISTRICT COURT.** See **Admiralty; Bankruptcy Act; Jurisdiction, III (3); V; Procedure, V; VIII, 1, 2, 9; IX, 3, 6.**
- DIVERSITY OF CITIZENSHIP.** See **Jurisdiction, III, 3; V, 7, 8, 12-17.**
- DIVIDENDS.** See **Corporations, 2.**
- DIVISION OF POWERS.** See **Constitutional Law, I.**
- DOMICILE.** See **Taxation, I.**

DRAFT ACT. See **Criminal Law**, 8, 10. PAGE

DUE PROCESS. See **Constitutional Law**, VIII; XI (3).

DUMPING. See **Admiralty**, 4-6.

DUTIES. See **Customs Law**.

EIGHTH AMENDMENT. See **Constitutional Law**, X.

ELECTION OF REMEDIES. See **Constitutional Law**, XI, 9; **Equity**, 9.

ELECTIONS. See **Witnesses**.

ELKINS ACT. See **Interstate Commerce Acts**, 6.

EMERGENCY FLEET CORPORATION. See **Shipping Board**.

EMINENT DOMAIN:

Jurisdiction of Supreme Court of Philippines to review evidence and make new award. See **Jurisdiction**, VII.

Injunction in another circuit, in aid of. See **Jurisdiction**, II, 1.

1. *Taking.* Discharge of projectiles from fort over private land not a taking. *Portsmouth Co. v. United States* 1

2. *Telegraph Lines.* Mississippi practice providing for assessment of damages and determination of right to condemn in separate proceedings. *Louis. & Nash. R. R. v. Western Union Tel. Co.* 363

3. *Id.* State may allow condemnation for existing as well as new line. *Id.*

4. *Id.* Where for new line, state courts may reserve inquiry into alleged purpose to use it for existing line, in alleged infraction of state law, until use is attempted. *Id.*

5. *Id. On Railroad Right of Way.* Judgment not void for failure to describe location of poles when it provides against interference with railroad and danger to persons or property. *Id.*

6. *Id. Interstate Railroad Bridges.* May be condemned pursuant to state law. *Id.*

EMPLOYER AND EMPLOYEE. See **Constitutional Law**, PAGE XI, 5-16, 36; XII, 2; **Employers' Liability Act**; **Master and Servant**.

EMPLOYERS' LIABILITY ACT:

Of Arizona. See **Constitutional Law**, XI, 5-13; XII, 2. Workmen's compensation law. *Id.*, XI, 9, 14-16.

1. Cook employed by interstate railroad for bridge carpenters in camp car provided to facilitate work in repairing bridges, *held* employed in interstate commerce. *Phila., B. & W. R. R. v. Smith* 101
2. Employee in charge of dump car used in filling in earth to replace trestle used in interstate commerce, and also employed to remove earth from between rails, *held* employed in interstate commerce. *Kinzell v. Chicago, Mil. & St. P. Ry.* 130

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law**, XI (4).

EQUITY. See **Injunction**; **Judgments**, 7; **Laches**; **Parties**, 3-5; **Procedure**, I.

1. *Public Lands; Protecting Possession*, lawfully acquired, pending adjudication of claims by Land Department. *Northern Pac. Ry. v. McComas*. 387
2. *Id.* Duty of Secretary of Interior to protect *bona fide* occupant of railroad land. *Id.*
3. *Express Trust; Accounting; Laches.* Suit against city for accounting of improvement fund and alleging failure to sell lands assessed for benefits and to apply proceeds to satisfaction of improvement certificates, brought 17 years after repudiation of trust duties, *held* barred by laches. *Benedict v. City of New York*. 321
4. *Id. Limitations.* Such action, *held* subject, if not to 6-year statute of limitations, then to 10-year statute governing bills for relief in cases of trust not cognizable in common-law courts. *Id.*
5. *Id.* In case of express trust, statute begins to run when trust is repudiated. *Id.*
6. *Id. Federal Courts.* Not bound by state statutes of limitations, in equity, but guided by them in determining action on stale claims. *Id.*

EQUITY—Continued.

PAGE

7. *Suit by Shareholders; Laches.* Delay of 22 years by minority in seeking to affix trust on shares in new corporation held by majority not laches where plaintiffs or others representing minority had been diligent in attacking foreclosure and reorganization proceedings through which such shares were acquired. *Southern Pac. Co. v. Bogert* 483

8. *Id. Class Suits.* When action is such that suit may be by plaintiff and all persons similarly situated, intervention by each person not necessary to avoid laches. *Id.*

9. *Id. Estoppel; Election.* Judgments against minority shareholders in suits to set aside foreclosure and reorganization agreement as fraudulent are no estoppel by either *res judicata* or election against further suit to declare majority shareholder trustee of new shares taken under new organization. *Id.*

10. *Fiduciary Duty of Majority Shareholder.* When majority shareholder not banker or underwriter, in relation to minority, so as to relieve of fiduciary duty to them in respect of new shares. *Id.*

11. *Id.* Majority exercising control are trustees for minority where control exercised by corporation through subsidiary over third corporation of which subsidiary is majority shareholder. *Id.*

12. *Id.* Duty of majority shareholder to share fruits of control with minority is fiduciary; not dependent on fraud or mismanagement *Id.*

13. *Id.* Fact that floating debts of old company were not provided for in reorganization does not bar relief to minority in action to hold majority shareholder as trustee. *Id.*

14. *Id. Contribution.* Majority shareholder allowed compensation for satisfaction of floating debts of old company, so far as new shares to be received by minority are thereby increased in value. *Id.*

15. *Id.* Claim of such compensation *held* not too late when made before final decree and delay not prejudicial to plaintiffs. *Id.*

16. *Id.* Such contributions may consist in payments by majority shareholder directly, or in effect by it through its subsidiary corporation. *Id.*

EQUITY—*Continued.*

PAGE

17. *Id.* In determining amounts of such contributions and extent to which minority benefited, judgments on floating debts against old company no bar to consideration of other relevant facts. *Id.*

18. *Injunction.* One not subjected to jurisdiction in action *in personam* in another State cannot enjoin its prosecution.

Pell v. McCabe 573

EQUITY RULE 31. See **Procedure, I, 1.**

ERROR AND APPEAL. See **Jurisdiction; Procedure.**

ESPIONAGE ACT. See **Criminal Law, 8, 10, 12.**

ESTATES OF DECEDENTS. See **Indians; Jurisdiction, V, 7; Taxation, II; III, 1, 2.**

ESTOPPEL. See **Indians, 11; Interstate Commerce Acts, 11, 12; Judgments, 3, 8.**

EVIDENCE. See **Criminal Law, 8-12; Customs Law, 4; Instructions; Interstate Commerce Acts, 5; Judicial Notice; National Banks, 5, 6; Pleading, 7-9; Presumption; Public Lands, II, 13; Witnesses.**

Parol evidence to prove apparent shareholder's liability due to mistake. See **Principal and Agent.**

Review, on appeal from Court of Claims. See **Procedure, VIII, 12.**

Review, of commissioner's findings in removal. See **Jurisdiction, III, 6.**

Review, by Supreme Court of Philippines, of evidence touching amount of award in condemnation. See **Jurisdiction, VII.**

1. *Competency; Books of Treasury Department,* kept according to law, competent evidence, without certification under Rev. Stats., § 882, to prove nonpayment of dividends by private corporation to United States. *Ches. & Del. Canal Co. v. United States* 123

2. *Id. Payment of Dividends.* Evidence sufficient to show dividends, sued for by Government many years after declared, were never paid. *Id.*

EVIDENCE—Continued.

PAGE

3. *Good Faith.* Under indictment for "knowingly" receiving rebates in violation of Elkins Act, defendant entitled to prove allowances were accepted in honest belief that they were sufficiently described in and justified under tariffs filed with Interstate Commerce Commission after Hepburn Act of 1906, which were accepted and not objected to by Commission. *Lehigh Coal & Nav. Co. v. United States* 556
4. *Patent Infringement.* That respondent's process was inefficient and wasteful as compared with that of petitioner's patent is pertinent to question of infringement. *Minerals Separation v. Butte & Superior Co.* 336
5. *Burden of Proof.* Fact that importer pays under protest and appeals to Board of General Appraisers, where collector reliquidates for fraud, does not require him to assume burden of disproving fraud. *Vitelli & Son v. United States* . . . 355
6. *Parol Evidence.* Waiver of written contract, as distinguished from varying by parol. *American Fire Ins. Co. v. King Lumber Co.* 2, 13
7. *Evidence of Prior Invention.* Oral testimony, as against existing patent, in absence of models, drawings, etc., open to suspicion, particularly if taken long after time of alleged invention. *Symington Co. v. National Castings Co.* 383
8. *Bankruptcy; Preferences.* Jurisdiction of District Court depends on allegations of bill and not proof. *Flanders v. Coleman* 223
9. *Review,* by this court of master's findings in rate case. *Lincoln Gas Co. v. Lincoln.* 256

EXCEPTIONS. See **Instructions; Jurisdiction, VII, 2.**

EXECUTIVE OFFICERS. See **Federal Control Act; Indians, 3, 5-9; Mandamus; Jurisdiction, V, 5; VIII; Mail Cars; Shipping Board, 2-4; Taxation, II; Telephones and Telegraphs.**

Administrative decisions. See **Claims, 3; Constitutional Law, I, 3; Customs Law, 2, 4; Interstate Commerce Acts, 1, 4; Public Lands, I; II, 4, 8-11.**

EXECUTORS AND ADMINISTRATORS. See **Jurisdiction, V, 7.**

FACTS. See **Constitutional Law**, XI, 7; **Gas Companies**, PAGE 2, 3; **Instructions**; **Judgments**, 11; **Procedure**, VIII, 11-18.

Administrative decisions. See **Claims**, 3; **Constitutional Law**, I, 3; **Customs Law**, 2, 4; **Interstate Commerce Act**, 1, 4; **Public Lands**, I; II, 4, 8-11.

Commissioner's findings, in removal. See **Jurisdiction**, III, 6.

FEDERAL CONTROL ACT. See **Constitutional Law**, VII; **Statutes**, 6; **Telephones and Telegraphs**.

1. Power of President to fix, and of Interstate Commerce Commission to consider, intrastate rates of railroads taken over under war power. *Northern Pac. Ry. v. North Dakota* 135

2. No room for presumption, in construing act, that powers of States, respecting such rates, were to continue. *Id.*

FEDERAL CORRUPT PRACTICES ACT. See **Witnesses**.

FEDERAL EMPLOYERS' LIABILITY ACT. See **Employers' Liability Act**.

FEDERAL MIGRATORY BIRD LAW. See **Constitutional Law**, III, 4.

FEDERAL QUESTION. See **Jurisdiction**, III, 3, 13, 15-19, 21; V, 9.

FEES. See **Attorneys**; **Interstate Commerce Acts**, 2; **Procedure**, III.

Clerk of court; right to retain one per cent. for receiving, keeping and paying out cash bail deposit. *Berkman v. United States*..... 114

FIDUCIARIES. See **Equity**.

FIFTH AMENDMENT. See **Constitutional Law**, VIII.

FINDINGS OF FACT. See **Facts**.

FIRE INSURANCE. See **Insurance**.

FOREIGN CORPORATIONS. See **Constitutional Law**, XI, PAGE 1, 17; **Taxation**, III, 9.

FORFEITURES. See **Admiralty**, 4-6.

FORGERY. See **Criminal Law**, 1.

FORTS:

Discharge of projectiles. See **Eminent Domain**, 1.

FOURTEENTH AMENDMENT. See **Constitutional Law**, XI.

FRANCHISES. See **Constitutional Law**, III, 6, 7; XI, 21, 22, 33.

1. *Railroads; Tax Exemption.* Provisions in charters of Southwestern and Muscogee railroads extend to lessee. *Central of Ga. Ry. v. Wright* 519

2. *Policy of Legislature.* Remained same when express power to let given in 1852. *Id.*

3. *Merger.* Under Act of 1856, did not affect exemption. *Id.*

4. *Georgia Constitution and Statutes.* Contain nothing to impair tax limitations. *Id.*

5. *State Bank Charter.* Provisions not inconsistent with general power of State to cause affairs to be examined and reported on and to exact assessment for maintenance of state banking department. *Bank of Oxford v. Love* 603

FRAUD. See **Bankruptcy Act**, 5; **Customs Law**; **Equity**, 9, 12; **Trade-Marks**.

FREIGHT. See **Interstate Commerce Acts**, 7-11, 16.

FRIVOLOUS QUESTION. See **Jurisdiction**, III, 8, 21.

FULL FAITH AND CREDIT. See **Constitutional Law**, V.

GAS COMPANIES. See **Constitutional Law**, IV, 1; **Judgments**, 5.

GAS COMPANIES—Continued.

PAGE

1. *Rate Cases.* When court need not review findings or re-cite evidence. *Lincoln Gas Co. v. Lincoln* 256
2. *Rate of Return.* Finding that no rate yielding as much as 6 per cent. could be deemed confiscatory disapproved, where 8 per cent. shown as lowest rate on capital in other business, and legal rate in State is 7 per cent. *Id.*
3. *Going Concern Value.* In absence of evidence that past earnings invested in business were excessive, finding restricting "going value" on theory that they were is erroneous. *Id.*
4. *Occupation Taxes.* Not allowed as operating expenses where adjudged void and not paid. *Id.*
5. *Test.* In absence of, when rate ordinance cannot be held void. *Id.*
6. *New Conditions.* Decree modified to permit new suit based on practical test under conditions at time of suit. *Id.*
7. *Judicial Notice.* Of increased costs of labor and supplies since hearing below, and of increase of annual returns upon capital. *Id.*

GEORGIA:

Constitution and statutes do not impair tax exemption provisions of charters of Southwestern and Muscogee railroads. *Central of Ga. Ry. v. Wright* 519

GRAND JURY.

Power of inquisition, scope of inquiry, and duty of witnesses to attend and answer. *Blair v. United States* 273

HABEAS CORPUS. See **Jurisdiction**, III, 6, 7; V, 10.

HEIRS. See **Indians**.

Finding of heirship, in state court; when not conclusive.
See **Judgments**, 11.

HEPBURN ACT. See **Interstate Commerce Acts**, 6, 16.

HOMESTEAD. See **Indians**, 1-5.

HUSBAND AND WIFE. See **Principal and Agent**.

IMPAIRMENT OF CONTRACT OBLIGATION. See **Con-** PAGE
stitutional Law, IV.

IMPORTS. See **Customs Law.**

IMPROVEMENT DISTRICTS. See **Taxation, III, 3-5.**
Certificates. See **Equity, 3.**

INCOME TAX. See **Taxation, I.**

INDIANS:

1. *Creek Homestead; Alienation.* Under § 9 of Act of 1908, homestead of full-blood Creek who dies leaving child born since March 4, 1906, is not freed from restrictions on alienation by death of allottee, but is set apart for use and support of such child for life, but not beyond April 26, 1931. *Parker v. Riley* 66

2. *Id. Nature of Estate.* Whether interest of child is estate for life or years, and what effect removal of restrictions, after death of allottee, would have on rights of such child and other heirs, not considered. *Id.*

3. *Id. Oil Lease; Royalties.* Where such child joins other heirs, with approval of Secretary of Interior, in leasing, special estate attaches to royalties, and child takes interest therefrom, during life but not beyond April 26, 1931. *Id.*

4. *Osage Homestead and Surplus Lands; Alienation.* Lands allotted under Act of 1906, in right of deceased member, duly enrolled, and descending to Indian heirs, subject to same restrictions as lands allotted to living members. *Kenny v. Miles* 58

5. *Id. Partition; Approval of Secretary; Power of Court.* "Restricted lands," as used in Act of 1912, refers to restrictions imposed to protect Indians; in absence of approval by Secretary, judgment for partition in suit in state court is inoperative, so that finding of heirship, forming part of it, is not conclusive in other proceedings. *Id.*

6. *Inherited Full-Blood Allotment; Alienation; Oil and Gas Lease.* What are restricted lands, within § 2 of Act of 1908, permitting lease with approval of Secretary of Interior. *Parker v. Richard* 235

INDIANS—Continued.

PAGE

7. *Id. Function of State Court.* Fact that Congress authorized state court to sanction conveyances, does not affect force and operation of restrictions while they remain. *Id.*
8. *Id. Royalties; Secretary's Function.* Duty to protect interests of heir, by supervising collection, care and disbursement, with Secretary. *Id.*
9. *Alienation; 25-year Trust Period.* Under Act of 1887, trust period runs from date of patent, not from date of approval of allotment by Secretary; and conveyance by heir, within that period as extended by President before its expiration, is void. *United States v. Reynolds* 104
10. *Allotment; Conveyance by Heirs.* Under Choctaw and Chickasaw Supplemental Agreement heirs of deceased Indian acquire no vendible interest, before selection, in land allotted in his name for their benefit under § 22. *Mullen v. Pickens*. 590
11. *Id. Effect of Deed Prior to Selection.* Their warranty deed cannot operate, by estoppel or otherwise, to convey land selected and allotted after it was made. *Id.*

INDICTMENT. See **Anti-Trust Act**, 2; **Criminal Law**, 5, 11; **Grand Jury**.

Construction of, not reviewable. See **Jurisdiction**, III, 5.

INFRINGEMENT. See **Patents for Inventions**; **Trade-Marks**.

INHERITANCE. See **Indians**.

Taxes. See **Constitutional Law**, VI, 2, 3; XI, 4, 34, 35, 39, 40; **Taxation**, II; III, 1, 2.

INJUNCTION:

Enjoining federal and state officials. See **Jurisdiction**, I, 3; V, 5; VIII.

Enjoining state proceedings. *Id.*, V, 6.

When injunction by one federal court binding on another. *Id.*, II, 1.

Ancillary jurisdiction in bankruptcy to enjoin action in state court. *Id.*, V, 4.

One not subjected to jurisdiction in action *in personam* in another State cannot enjoin its prosecution. *Pell v. McCabe* 573

INSTRUCTIONS. See **Criminal Law**, 8, 9; **Interstate Commerce Acts**, 3-5.

Request for directed verdict. See **Pleading**, 8, 9.

1. *Suggesting Omissions.* Where trial judge overlooked one of several requests to charge, and opportunity is given to suggest omission, failure to avail waives error in not granting request. *Pennsylvania R. R. v. Minds* 368

2. *General Exception* to refusals to charge as requested insufficient. *Id.*

3. *Submitting Issues to Judge.* Where both parties request peremptory instruction, they assume facts to be undisputed and, in effect, submit to trial judge determination of inferences to be drawn from them. *Williams v. Vreeland* 295

4. *In Absence of Counsel.* Error for trial court to send jury, after retirement and at its request, supplementary instruction in writing, the parties and their counsel being absent and no opportunity being given to be present or make objection. *Fillippon v. Albion Vein Slate Co* 76

5. *Right to be Present.* An opportunity afterwards to except is not equivalent to an opportunity to be present. *Id.*

6. *Presumptive Harm.* Erroneous instructions are presumptively harmful. *Id.*

7. *Conflicting Instructions.* Erroneous instruction may neutralize correct one on same subject and introduce material error. *Id.*

INSURANCE:

Foreign Corporations; Agency; Warranty; Waiver. State may make persons applying for fire policies and receiving and transmitting premiums agents of foreign company, notwithstanding contrary stipulations of policy; knowledge of such agents may constitute waiver of warranty for concurrent insurance. *American Fire Ins. Co. v. King Lumber Co.* 2

INTENT. See **Anti-Trust Act**, 1; **Constitutional Law**, VII, 4; **Criminal Law**, 13; **Statutes**, 6.

INTEREST. See **Interstate Commerce Acts**, 1.

INTERIOR, SECRETARY OF. See **Indians**, 3, 5-9; **Public Lands**, I; II, 10, 11.

INTERSTATE COMMERCE ACTS—*Continued.*

PAGE

10. *Id.* Agreement with consignor that title shall not pass to consignee until delivery cannot alter situation. *Id.*
11. *Id. Estoppel.* Nor can the hardship to consignee; act can not be avoided by estoppel. *Id.*
12. *Carmack Amendment.* Connecting carriers, by requiring shipper to sign new bills of lading, not estopped to avail of provision of original bill limiting time for bringing actions for damages, where new bills not acquiesced in by shipper. *Texas & Pacific Ry. v. Leatherwood.* 478
13. *Id. Limitations.* Six months in which to sue not unreasonable, and before Act of 1915 was valid under Carmack Amendment. *Id.*
14. *Live Stock; Written Claim.* Liability for injury conditioned upon written claim within 5 days from removal from cars. *Erie R. R. v. Shuart.* 465
15. *Id.* When transportation ended. *Id.*
16. *Failure to Deliver; Misdescription of Goods; Rates.* Under terms of bill of lading, innocent misdescription, placing goods in class entitled to lower rate under schedules, imposed obligation to pay freight according to true character, and did not affect liability of carrier for failure to deliver. *New York Cent. R. R. v. Goldberg.* 85

INTERSTATE COMMERCE COMMISSION. See **Federal Control Act; Interstate Commerce Acts; Mail Cars.**

INTERVENTION. See **Equity, 8; Parties, 4, 5; Procedure, V.**

INTOXICATING LIQUORS. See **Trade-Marks.**

INVENTIONS. See **Patents for Inventions.**

JOINDER. See **Parties, 2; Pleading, 1.**

JUDGMENTS. See **Eminent Domain, 5.**
 Full faith and credit. See **Constitutional Law, V.**
 Disposition of case. See **Procedure, IX.**
 Findings of Court of Claims. *Id.*, **VIII, 12, 13.**
 Administrative decisions. See **Claims, 3; Constitutional Law, I, 3; Customs Law, 2, 4; Interstate Commerce Act, 1, 4; Public Lands, I; II, 4, 8-11.**

JUDGMENTS—Continued.

PAGE

1. *Injunction, in Another Circuit.* Injunction by federal court forbidding railroad to interfere with telegraph company in use of wires on right of way pending condemnation, binding on federal court of another circuit. *Louis. & Nash. R. R. v. Western Union Tel. Co.* 363

2. *Injunction; Staying State Proceedings.* Jud. Code, § 265, forbidding injunctions to stay proceedings in state court, refers to proceedings in which final judgment or order has not been entered and in which power exerted is judicial. *Public Service Co. v. Corboy* 153

3. *Decree in Bankruptcy; Estoppel.* Where District Court approved composition relieving special partner upon giving up scheduled claim and assuming certain obligations, and dismissed petitions to have him declared general partner and adjudged bankrupt, *held* that decree did not estop strangers to bankruptcy proceedings from prosecuting action for fraud in court of another State to hold him as general partner of bankrupts; and that District Court had no jurisdiction ancillary to bankruptcy decree to enjoin such action. *Pell v. McCabe.* 573

4. *Against Collector, in action to recover back tax, and satisfaction by United States, does not bar further action against United States to recover remainder.* *Sage v. United States.* 33

5. *Res Judicata.* Where District Court upheld ordinance rates but declared an occupation tax void, and, after appeal in which tax ruling not assigned as error or referred to by this court, rate was again sustained without further mention of tax, *held* that earlier adjudication was part of final decree, establishing beyond collateral attack that tax was void. *Lincoln Gas Co. v. Lincoln* 256

6. *In Rate Case.* Modified so as to be without prejudice to new suit, in which complainant may show, as a result of practical test, whether rate is confiscatory under new conditions. *Id.*

7. *Declaring Trust.* Where majority shareholder through reorganization obtained all shares of new corporation, and after years pledged them with other securities as collateral, minority's later claim to such shares should be so enforced

JUDGMENTS—Continued.

PAGE

as not to create undue pecuniary burden on majority in maintaining collateral values under loan agreement, and depreciation of other collateral since entry of present decree should be considered, upon remand for other reasons. *Southern Pac. Co. v. Bogert* 483

8. *Res Judicata; Election.* Judgments against minority shareholders in suits to set aside fraudulent reorganization agreement *held* not to estop them, by way of *res judicata* or of election, from further suit to hold majority as trustee of new shares taken by it under reorganization. *Id.*

9. *Id.* In such suit, majority shareholder should be allowed compensation for contributions toward satisfaction of floating debts of old company, and in determining amounts and extent to which they benefited minority, judgments on floating debts against old company *held* not to bar consideration of other relevant facts. *Id.*

10. *Determining Scope.* Decree set up as basis for ancillary jurisdiction cannot be affected by admission by demurrer. *Pell v. McCabe* 573

11. *Indian Land Partition; State Court.* In absence of approval by Secretary of Interior, judgment for partition of restricted lands of deceased Osage allottee in state court is inoperative, so that finding of heirship, forming part of it, is not conclusive in other proceedings. *Kenny v. Miles*... 58

JUDICIAL CODE. See **Jurisdiction.**

JUDICIAL DISCRETION. See **Criminal Law**, 5, 6; **Interstate Commerce Acts**, 2; **Pleading**, 5, 9.

JUDICIAL NOTICE:

1. Importance of bills of lading in interstate commerce. *United States v. Fenger*..... 199

2. Increased costs of labor and supplies and increase of annual returns upon capital, due to war. *Lincoln Gas Co. v. Lincoln* 256

JUDICIAL POWER. See **Constitutional Law**, II.

JURISDICTION:

PAGE

- I. In General, p. 718.
- II. Of Federal Courts; Injunction, p. 719.
- III. Jurisdiction of this Court:
 - (1) In General, p. 719.
 - (2) Over Circuit Court of Appeals, p. 719.
 - (3) Over District Court, p. 719.
 - (4) Over Court of Claims, p. 720.
 - (5) Over State Courts, p. 720.
- IV. Jurisdiction of Circuit Court of Appeals, p. 721.
- V. Jurisdiction of District Court, p. 721.
- VI. Jurisdiction of Court of Claims, p. 723.
- VII. Jurisdiction of Supreme Court of Philippines, p. 723.
- VIII. Jurisdiction of State Courts, p. 724.

See **Admiralty; Bankruptcy Act; Constitutional Law; Equity; Procedure.**

Jurisdiction over the person. See V, 12-17, *infra*.

Ancillary jurisdiction. See I, 2; V, 4, *infra*.

Jurisdiction of state court to determine heirship of Osage Indians. See **Indians**, 5.

Right to enjoin a legal prosecution before being served in it. See **Equity**, 18.

As to facts decided by administrative officers. See **Claims**, 3; **Constitutional Law**, I, 3; **Customs Law**, 2, 4; **Inter-state Commerce Acts**, 1, 4; **Public Lands**, I; II, 4, 8-11.

Federal question. See III, 3, 13, 15-19, 21; V, 9, *infra*.

Local law. See III, 10; VII, *infra*; **Procedure**, VII; VIII, 4, 18.

Local action. See V, 13, *infra*.

I. In General. See **Pleading**.

1. *Administrative Question.* Courts cannot anticipate adjudication by Land Department, beyond protecting possession lawfully acquired. *Northern Pac. Ry. v. McComas* 387

2. *Admitting by Demurrer.* Scope of decree set up as basis for ancillary jurisdiction cannot be affected by admission by demurrer. *Pell v. McCabe* 573

3. *Moot Case.* Suit to enjoin interference with cable lines as in excess of power given by Joint Resolution of July 16, 1918, becomes moot upon restoration of lines to owners, and

JURISDICTION—Continued.

PAGE

apprehension that alleged wrongs may be repeated and revenues claimed by United States does not preserve justiciable quality of case. *Commercial Cable Co. v. Burleson* 360

II. Of Federal Courts; Injunction.

1. Injunction by federal court forbidding railroad to interfere with telegraph company in use of wires on right of way pending condemnation, *held* binding on federal court of another circuit. *Louis. & Nash. R. R. v. Western Union Tel. Co.* 363

2. Federal courts, in equity, are not bound by state statutes of limitations, but are guided by them in determining action on stale claims. *Benedict v. City of New York* 321

III. Jurisdiction of this Court.

(1) *In General.*

1. *Constitutional Question.* Court will not pass upon constitutionality of act of Congress when party attacking it not entitled to raise question. *Blair v. United States* 273

2. *Conformity Act.* Appellate proceedings in this court are not affected by Conformity Act, and in cases from federal courts it may enter judgment as nature of case requires, without regard to technical errors, etc., which do not affect substantial rights of parties. *Camp v. Gress* 308

(2) *Over Circuit Court of Appeals.* See IV, *infra*.

3. *Constitutional Question and Diverse Citizenship.* Appeal lies in cases where jurisdiction of District Court rested on both grounds. *Benedict v. City of New York* 321, 325

4. *Certiorari.* Brings up whole case, including questions affecting merits as well as jurisdiction of District Court. *Camp v. Gress* 308

(3) *Over District Court.* See V, *infra*.

Bill of review. See **Procedure**, VIII, 1.

5. *Criminal Appeals Act.* This court must confine itself to question of construction of statute by District Court, accepting that court's interpretation of indictment. *United States v. Colgate & Co.* 300

6. *Removal Proceedings; Habeas Corpus.* Commissioner's

JURISDICTION—Continued.

PAGE

finding of fact, supported by competent evidence, not reviewable. *Rumely v. McCarthy* 283

7. *Id. Judicial Discretion.* Where defendant indicted in two districts, it is discretionary with court of one to order removal to the other district under later indictment, and the discretion is not reviewable in *habeas corpus*. *Id.*

8. *Frivolous Question.* Contention that retention by clerk as compensation of percentage of bail deposit violates constitutional rights held frivolous. *Berkman v. United States* 114

9. *On Direct Appeal Involving Jurisdiction.* Questions of comity and sufficiency of plaintiff's averments to justify relief not before this court. *Public Service Co. v. Corboy* . . . 153

10. *Id.* Whether surrender of real property and delivery of rent notes amounted to conveyances under state law, held matters appertaining to merits not to be considered on direct appeal under Jud. Code, § 238. *Flanders v. Coleman* 223

(4) *Over Court of Claims.* See VI, *infra*.

11. *Finding of Facts*, not essential where Court of Claims dismisses for want of jurisdiction on ground that facts alleged do not establish contract with United States. *Cartas v. United States* 545

12. *Findings, Conclusive.* This court is not at liberty to refer to evidence, any more than to opinion, for purpose of eking out, controlling or modifying their scope. *United States v. Brothers.* 88

(5) *Over State Courts.* See VIII, *infra*.

13. *Error or Certiorari.* Judgment holding shares within general succession tax of State, though tax was opposed as reaching real property outside of State, does not involve validity of tax statute or authority exercised under State, within Jud. Code, § 237. *Dana v. Dana* 220

14. *Injunction against Federal Officials.* Jurisdiction over judgment enjoining acts as invasions of state power, where restraint, if acts are legal, would affect interests of United States. *Northern Pac. Ry. v. North Dakota* 135
See *Dakota Cent. Tel. Co. v. South Dakota* 163

15. *Intermediate Court.* Judgment of intermediate court

JURISDICTION—Continued.

PAGE

upholding state law against objection based on Federal Constitution reviewable if Supreme Court refuses appeal. *Pennsylvania R. R. v. Public Service Comm.* 566

16. *Right to Present Federal Question.* Want of power in state commission to consider constitutionality of law which it seeks to enforce can not limit right of party affected to raise question in state courts. *Id.*

17. *Error or Certiorari.* No jurisdiction on error, on ground that state law was sustained against claim of federal right, where state judgment based on earlier laws and decisions, without any application of law in question. *U. S. Fidelity Co. v. Oklahoma* 111

18. *Id.* Claim that issue between private parties involving state boundary was submitted to jury on theory inconsistent with decisions of this court, thereby depriving party of federal right, affords no ground for review by writ of error. *Rust Land Co. v. Jackson* 71

19. *Id.* That decision of state boundary suit in this court will be determinative of private rights, and that party is entitled to continuance in state supreme court pending decision, asserts at most a federal right, title, privilege or immunity; refusal of such continuance raises no question as to validity of an authority exercised under United States. *Id.*

20. *Id. Certiorari Barred.* Application to review state judgment barred after three months' period, § 6, Act 1916, has expired. *Id.*

21. *Frivolous Federal Question.* Claim of city that transfer from city to state commission of authority to fix gas rates impairs franchise contract between city and company presents no question under contract clause. *Pawhuska v. Pawhuska Oil Co.* 394

IV. Jurisdiction of Circuit Court of Appeals. See III (2), *supra*.

Conformity Act. Appellate proceedings in, not affected by Conformity Act, but governed by acts of Congress, common law, and ancient English statutes. *Camp v. Gress* 308

V. Jurisdiction of District Court. See **Admiralty; Bankruptcy Act;** III (3), *supra*.

1. *Penalties and Forfeitures.* Whether a proceeding in ad-

JURISDICTION—Continued.

PAGE

miralty to enforce an unliquidated fine against a vessel comes within Jud. Code, § 24 (9)? *The Scow "6-S"* 269

2. *Dependent on Bill.* In suit by trustee to set aside preferences, jurisdiction depends on allegations of bill and not proofs in support of them. *Flanders v. Coleman* 223

3. *Duty to Decide Case.* Where bill makes case within jurisdiction, court must determine merits. *Id.*

4. *Ancillary Jurisdiction,* to enjoin state court proceeding in aid of bankruptcy decree. *Pell v. McCabe* 573

5. *Enjoining State Officials.* Jurisdiction to restrain execution of state law in alleged violation of constitutional rights. *Public Service Co. v. Corboy* 153

6. *Over Proceedings of State Court.* Jud. Code, § 265, forbidding injunctions to stay proceedings in state court, refers only to proceedings in which final judgment or order has not been entered and in which power exerted is judicial. *Id.*

7. *Diverse Citizenship; Assignee; Jud. Code, § 24.* Action by assignee of remainder interest against life tenant's executor and surety jointly on bond to secure remaindermen not cognizable in District Court, where assignor and defendants are citizens of same State. *Brainerd &c. Quarry Co. v. Brice* 229

8. *Dependent on Complaint.* Allegations of complaint determine character of action. *Id.*

9. *Scope of Decision.* Having acquired jurisdiction by federal question, may dispose of issue by application of state constitution. *Lincoln Gas Co. v. Lincoln* 256

10. *Removal Proceedings; Habeas Corpus.* Self-incrimination is matter for defense at trial, and does not go to issue of probable cause. *Rumely v. McCarthy* 283

11. *Id. Judicial Discretion.* Where defendant indicted in two districts, it is discretionary with court of one to order removal to the other district under later indictment. *Id.*

12. *Residence of Codefendants; Jud. Code, § 51.* When action brought against several defendants in district where some reside and jurisdiction founded on diverse citizenship, codefendant not subjected to jurisdiction by service in that

JURISDICTION—Continued.

PAGE

district if citizen and resident of another State. *Camp v. Gress* 308

13. *Id. Local Action, § 52.* This construction is confirmed by provision (Jud. Code, § 52) permitting action not of local nature against defendants residing in different districts of same State to be brought in either district. *Id.*

14. *Plaintiff's Residence; Jud. Code, § 50.* Words "found within the district" are confined (by Jud. Code, § 51) to cases in which action brought in district of plaintiff's residence. *Id.*

15. *Exemption of Nonresident Personal.* Where action is against resident and nonresident defendants, exemption of nonresident from suit (Jud. Code, § 51) is personal to him and cannot be availed of by codefendants. *Id.*

16. *Joint Obligors.* In action on joint contract, all obligors not indispensable parties, and, under Jud. Code, § 50, District Court may render judgment against those over whom it has acquired jurisdiction. *Id.*

17. *Id. Harmless Error.* In such case, error in assuming jurisdiction and rendering judgment as to all joint contractors will not necessitate reversal as to those properly included, if their interests have not been prejudiced. *Id.*

18. *Patent Laws.* Suit by patentee to compel accounting for royalties under contract assigning patent is not one arising under patent laws, within Jud. Code, § 24 (7). *Odell v. Farnsworth Co* 501

VI. Jurisdiction of Court of Claims. See III (4), *supra*.

Under Act of 1885, claims for property of officers and enlisted men lost in military service are exclusively within jurisdiction of Treasury Department and not within jurisdiction of Court of Claims. *United States v. Babcock* 328

VII. Supreme Court of Philippines.

1. Under Code of Civ. Proc., may review evidence touching amount of award by commissioners accepted by Court of First Instance, in condemnation case, and make new award. *Tayabas Land Co. v. Manila R. R.* 22

2. Motion for new trial and exceptions. *Id.*

JURISDICTION—*Continued.*

PAGE

VIII. Jurisdiction of State Courts. See III (5), *supra*.

Enjoining Federal Officials. Jurisdiction to enjoin acts as invasions of state power, where restraint, if acts are legal, would affect interests of United States. *Northern Pac. Ry. v. North Dakota* 135
See Dakota Cent. Tel. Co. v. South Dakota 163

JURY. See **Constitutional Law**, VIII, 1, 2; IX, 1; XI, 7, 13;**Interstate Commerce Acts**, 1; **Libel**, 2.Instructions. See **Criminal Law**, 8, 9; **Instructions; Interstate Commerce Acts**, 3-5.Directed verdict. See **Pleading**, 8, 9.**LABELS.** See **Trade-Marks**.**LACHES.** See **Equity**, 3-6; **Procedure**, VIII, 1.

1. Long failure to discover appropriate remedy, though well known, does not establish laches if there has been diligence and delay has not prejudiced defendant. *Southern Pacific Co. v. Bogert* 483

2. Each member of a class need not intervene in a class suit to avoid charge of laches. *Id.*

LAND DEPARTMENT. See **Public Lands**.**LANDS.** See **Boundaries; Eminent Domain; Indians; Mortgages; Public Lands**.Improvement certificates; action against municipality for failure to sell lands for satisfaction. See **Equity**, 3.Improvement districts. See **Taxation**, III, 3-5.**LEASE.** See **Contracts**, 4; **Indians**, 3, 6-8.Lessee of railroad; tax exemption in charter. See **Franchises**, 1.**LIBEL.** See **Admiralty**.

1. News statement that C shot and killed G while G was abusing his wife who had taken refuge at C's home is not libelous *per se*. *Washington Post Co. v. Chaloner* 290

2. Publication must be read and construed in sense in which readers to whom addressed would understand it; and, if

LIBEL—*Continued.*

PAGE

capable of two meanings, it is for jury to say which would be attributed to it by readers. *Id.*

LIBERTY OF CONTRACT. See **Constitutional Law**, VIII, 4.

LICENSE FEES. See **Constitutional Law**, III, 5, 6; XI, 18–22, 37.

LIEN. See **Attorneys; Interstate Commerce Acts**, 9.

LIFE TENANT. See **Indians**, 2, 3.

Action on bond of, to secure remainder interest. See **Jurisdiction**, V, 7.

LIMITATIONS. See **Claims**, 4; **Customs Law**, 1; **Equity**, 3–6; **Jurisdiction**, III, 20; **Laches**.

Provided by bill of lading. See **Interstate Commerce Acts**, 13.

Time for presenting claims for refund of inheritance taxes. See **Taxation**, II.

In Court of Claims. *Id.*, II, 3.

1. State statutes and principle of laches inapplicable to United States when asserting governmental rights. *Ches. & Del. Canal Co. v. United States* 123

2. *Semble*, that presumption of payment arising from lapse of 20 years without suit does not apply to United States. *Id.*

3. Where lands claimed by individual under Swamp Land Act are patented, pending suit, to railroad under lieu selection, occupant can not avail of statute of limitations or attack patent collaterally. *Northern Pac. Ry. v. McComas* . . 387

LIVE STOCK. See **Interstate Commerce Acts**, 14, 15.

LOCAL ACTION. See **Jurisdiction**, V, 13.

LOCAL LAW. See **Jurisdiction**, III, 10; VII; **Procedure**, VII; VIII, 4, 18.

MAIL CARS:

Pennsylvania law regulating equipment, etc., when used as end cars, invades field occupied by Congress through

MAIL CARS—*Continued.*

PAGE

regulations of Postmaster General, Safety Appliance Act,
and regulations of Interstate Commerce Commission.
Pennsylvania R. R. v. Public Service Comm. 566

MANDAMUS:

Examination of facts as to work done, and construction by
Secretary of Interior that it was not opening or improving a
"mine," not reviewable by mandamus. *Alaska Smokeless
Coal Co. v. Lane* 549

MARRIED WOMEN. See **Principal and Agent.**

MASTER. See **Procedure**, VIII, 15.

MASTER AND SERVANT. See **Constitutional Law**, XI,
5-16, 36; XII, 2; **Employers' Liability Act.**

Under law of Pennsylvania, servant who goes on with peri-
lous work under peremptory orders of master, although
knowing attendant danger, is not guilty of contributory
negligence unless he knows or should know that danger is
inevitable or imminent. *Fillippon v. Albion Vein Slate Co.* 76

MICHIGAN:

Maximum passenger rate law held confiscatory. *Groesbeck
v. Duluth &c. Ry.* 607

MIGRATORY BIRDS. See **Constitutional Law**, III, 4.

MILITARY SERVICE. See **Claims**, 2-4; **Criminal Law**, 8,
10, 12, 13.

MINES AND MINING. See **Public Lands**, I.

MISSISSIPPI. See **Boundaries**; **Eminent Domain**, 2.

MISSISSIPPI RIVER. See **Boundaries.**

MISTAKE. See **Interstate Commerce Acts**, 9-11.

MONOPOLIES. See **Anti-Trust Act.**

MOOT CASE. See **Procedure**, VIII, 7, 8; IX, 6.

MORTGAGES:

PAGE

Regarded as "property;" situs for taxation at place other than owner's domicile. *De Ganay v. Lederer* 376

MOTIVE. See **Anti-Trust Act**, 1; **Constitutional Law**, VII, 4; **Criminal Law**, 13; **Statutes**, 6.

MUNICIPALITIES. See **Constitutional Law**, III, 5, 6, 7; IV, 1; XI, 37; **Ordinances**.

Action against, for accounting and failure to sell lands and apply proceeds to satisfaction of improvement certificates. *Benedict v. City of New York*. 321

NATIONAL BANKS. See **Franchises**, 5.

Who are shareholders liable to assessment. See **Principal and Agent**.

1. *Director's Liability.* In addition to specific duties under National Banking Law, director is under common-law obligation to exercise care and prudence in supervision of bank's affairs. *Bowerman v. Hamner*. 504

2. *Id. Knowledge.* Not essential element of common-law liability. *Id.*

3. *Id. Negligence.* Wilful failure to attend meetings and supervise affairs of bank renders director liable for loss resulting from mismanagement by executive officers. *Id.*

4. *Id. Absentee.* Residence at distance from bank does not excuse. *Id.*

5. *Id. Proceedings to Enforce.* Where bill charged both statutory and common-law liability, and defendant obtained dismissal on plaintiff's proofs and Court of Appeals reversed and directed decree against him on ground that common-law liability was established, defendant not entitled to new trial on ground that that issue was not considered as involved in District Court. *Id.*

6. *Id. When Responsibility Continues.* Director remains responsible as such in absence of evidence that he has resigned or refused to qualify when reelected. *Id.*

NAVIGABLE WATERS. See **Admiralty**; **Boundaries**; **Constitutional Law**, III, 8, 9.

NAVY REGULATIONS. See **Claims**, 2.

NEGLIGENCE. See **Constitutional Law**, XI, 5 *et seq.*; **Employers' Liability Act**; **Interstate Commerce Acts**, 14; **Master and Servant**; **National Banks**, 1, 3.

NEW JERSEY:

Inheritance tax law sustained. *Maxwell v. Bugbee* 525

NEWSPAPERS. See **Criminal Law**, 8, 10; **Libel**.

NEW YORK:

Workmen's Compensation Law; awards for disfigurement, sustained. *New York Cent. R. R. v. Bianc* 596

NEW YORK CITY:

Action against, for accounting and failure to sell lands and apply proceeds to satisfaction of improvement certificates. *Benedict v. City of New York* 321

NEW YORK HARBOR. See **Admiralty**, 4.

NONRESIDENTS. See **Constitutional Law**, VI, 2, 3; XI, 4, 34, 35, 39, 40; **Jurisdiction**, V, 7, 12-17; **Taxation**, I.

NONSUIT. See **Pleading**, 6-9.

NOTICE. See **Constitutional Law**, XI (2); **Insurance**; **Judicial Notice**.

Of claim of loss. See **Interstate Commerce Acts**, 14.

OFFICERS. See **Fees**; **Indians**, 3, 5-9; **Mail Cars**; **Mandamus**; **National Banks**; **Taxation**, II.

Enjoining federal and state officials. See **Jurisdiction**, I, 3; V, 5; VIII.

President; power to initiate intrastate rates. See **Federal Control Act**.

Id. Under Shipping Act of 1916. See **Shipping Board**, 2-4.

Id. Control of telephones and telegraphs. See **Telephones and Telegraphs**.

Primary elections; investigation of violations of Corrupt Practices Act. See **Witnesses**.

Administrative decisions. See **Claims**, 3; **Constitutional Law**, I, 3; **Customs Law**, 2, 4; **Interstate Commerce Acts**, 1, 4; **Public Lands**, I; II, 4, 8-11.

Suit to enjoin Postmaster General from interfering with cable lines. *Commercial Cable Co. v. Burleson* 360

ORDINANCES:

PAGE

1. Requiring removal from public street of railroad track.
Denver & Rio Grande R. R. v. Denver 241
2. Validity of tax on telegraph poles and wires erected in city streets under franchise. *Mackay Tel. Co. v. Little Rock* 94

OSAGE INDIANS. See **Indians**, 4, 5.

PAIN. See **Constitutional Law**, XI, 12.

PAROL EVIDENCE. See **Evidence**, 6.

PARTIES. See **Injunction**.

Intervention. See **Equity**, 8; **Procedure**, V.

Costs. See **Procedure**, III.

Service of process. See **Jurisdiction**, V, 12-17.

Enjoining federal and state officials. See **Jurisdiction**, V, 5; VIII.

Who may question constitutionality of statutes. See **Constitutional Law**, XII.

When shareholder may sue in his own name. See **Contracts**, 1.

When occupant of public lands may not avail of statute of limitations or attack patent collaterally. See **Public Lands**, II, 12.

1. *United States*. In suit to collect dividends on corporate shares, United States acts in governmental capacity. *Ches. & Del. Canal Co. v. United States* 123
See **Limitations**, 1, 2.

2. *Joint Obligors*. In action on joint contract, all of obligors are not indispensable parties; District Court may render judgment against those over whom it has acquired jurisdiction. *Camp v. Gress*. 308

3. *Suit by Minority Shareholders*, to affix trust on new shares acquired by majority through unfair reorganization; old company is not necessary party. *Southern Pacific Co. v. Bogert* . 483

4. *Id. Intervention*. In class suit by minority, others in like case may intervene in District Court after interlocutory decree. *Id.*

5. *Id.* In such suit, application of other minority shareholders to intervene in this court denied, without prejudice to right to apply to District Court, the case being remanded. *Id.*

PARTITION. See **Judgments**, 11.

PAGE

PARTNERSHIP. See **Bankruptcy Act**, 5.

PASSENGER FARES. See **Carriers**, 2-4.

PATENTS FOR INVENTIONS:

1. *Accounting; Jurisdiction.* Suit by patentee for accounting for royalties under contract assigning patent is not one arising under patent laws. *Odell v. Farnsworth Co.* 501
2. *Assignments; Unliquidated Claim Against United States.* Under Act of 1910, for infringement of patent, not assignable with patent. *Brothers v. United States* 88
3. *Infringement.* Patent No. 551,614, to Sarah E. Brothers for "improvements in cable cranes with gravity anchors" not infringed. *Id.*
4. *Interpretation of Claims.* Where claims called for "pocket" without indicating whether it must be integral or might be in two parts to be assembled, latter interpretation held correct, in view of language of another claim and of specifications. *Symington Co. v. National Castings Co.* . . 383
5. *Priority.* He of prior application and patent is presumptively prior inventor. *Id.*
6. *Evidence.* Oral testimony of prior invention as against existing patent, in absence of models, drawings, etc., open to suspicion. *Id.*
7. *Mental Conception,* in process of development, occasionally outlined on scraps of paper, subsequently discarded, and roughly worked into small model, not invention. *Id.*
8. *Infringement.* Patent No. 835,120, for improvements in process of concentrating ores, by means of oils, sustained as to certain claims. *Minerals Separation v. Butte & Superior Co.* 336
9. *Construction of Claims.* The claims cover use, in the process, of oils of patent in amounts equal to any fraction of one per cent. on the ore. *Id.*
10. *Id. Strict.* When inventor comes late into field well developed and approaching results of his invention, patent construed strictly. *Id.*

PATENTS FOR INVENTIONS—Continued.

PAGE

11. *Id.* Invention must be particularly pointed out and distinctly claimed; patent cannot be extended beyond claims. *Id.*
12. *Patentability.* Result of a process is not patentable, but only means disclosed for achieving it. *Id.*
13. *Infringement.* Evidence that respondent's process was inefficient and wasteful as compared with that of petitioner's patent is pertinent to question of infringement. *Id.*
14. *Disclaimer,* under Rev. Stats., §§ 4917, 4922, held not evasive, and, in view of foreign residence of patent owners and difficulty of communication during war, not unreasonably neglected or delayed. *Id.*

PATENTS FOR LANDS. See **Indians; Public Lands.**

PAYMENT. See **Claims, 5.**

Books of Treasury Department, as evidence of. See **Evidence, 1.**

Seemle, that presumption of payment arising from lapse of 20 years without suit does not apply to United States when asserting governmental rights. *Ches. & Del. Canal Co. v.*

United States. 123

PENALTIES. See **Admiralty, 4-6.**

PENNSYLVANIA. See **Master and Servant.**

Act of 1911, regulating equipment, etc., of mail cars when used as end cars, invalid as applied to interstate train.

Pennsylvania R. R. v. Public Service Comm. 566

PEREMPTORY CHALLENGES. See **Criminal Law, 7.**

PERSONAL INJURY. See **Constitutional Law, XI, 5-16, 36; XII, 2; Employers' Liability Act; Master and Servant.**

PHILIPPINE ISLANDS. See **Jurisdiction, VII; Procedure, VIII, 18.**

PLEADING:

Continuance. See **Jurisdiction, III, 19.**

Sufficiency of averments. See **Procedure, VIII, 3.**

PLEADING—*Continued.*

PAGE

Replication. See **Procedure**, I, 1.New trial. See **Customs Law**, 4; **Procedure**, IX, 3.

1. *Joining Causes of Action.* In action against director of national bank, both statutory and common-law liability may be charged in one bill of complaint. *Bowerman v. Hamner* 504

2. *Founding Jurisdiction.* Allegations of complaint determine character of action for testing jurisdiction of District Court. *Brainerd &c. Quarry Co. v. Brice* 229

3. *Id. Bankruptcy.* In suit by trustee to set aside preferences, jurisdiction of District Court depends on allegations of bill and not proof. *Flanders v. Coleman* 223

4. *Id. Aider by Admissions.* Scope of decree set up as basis for ancillary jurisdiction cannot be affected by admission by demurrer. *Pell v. McCabe* 573

5. *Amendment.* Mistake in transposing awards relied on in two closely related actions amendable in District Court's discretion. *Pennsylvania R. R. v. Minds* 368

6. *Nonsuit; Conformity Act.* Right to take voluntary nonsuit is substantial; when and how asserted are questions of state practice. *Barrett v. Virginian Ry* 473

7. *Id. Virginia Practice.* In absence of demurrer to evidence and joinder therein, plaintiff may take nonsuit any time before retirement of jury. *Id.*

8. *Id. Motion for Directed Verdict.* By defendant, at conclusion of testimony, not equivalent to demurrer to evidence.

9. *Id. Judicial Discretion.* Making of such motion and impending allowance do not place plaintiff's right to take nonsuit at discretion of court. *Id.*

POLE TAX. See **Constitutional Law**, III, 6; XI, 21, 22, 37.

POLICE POWER. See **Constitutional Law**; **Federal Control Act**; **Statutes**, 6.

POSSESSION. See **Public Lands**, II, 7-12.

POSTMASTER GENERAL. See **Mail Cars; Officers; Tele- phones and Telegraphs, 2.** PAGE

POST-ROADS. See **Constitutional Law, III, 6, 9, 10.**

PREFERENCES. See **Bankruptcy Act, 3; Interstate Commerce Acts, 4, 7.**

PRESIDENT. See **Constitutional Law, I, 3; VII; Federal Control Act; Indians, 9; Shipping Board, 2-4; Tele- phones and Telegraphs.**

PRESUMPTION. See **Instructions, 6; Payment; Proceed- ure, VIII, 18; Statutes, 4, 5, 7.**

1. *Of Continuance.* Provision for complete change to Fed- eral control being clear, presumption that state control over intrastate rates was to remain unchanged because it pre- viously existed. *Northern Pac. Ry. v. North Dakota* 135
See *Dakota Cent. Tel. Co. v. South Dakota* 163

2. *Regularity.* Where liability for injury or death is lim- ited to conscientious valuation of loss, presumption is that juries and courts will confine it accordingly. *Arizona Em- ployers' Liability Cases.* 400

3. *Official Action.* No presumption that action of collector in reliquidating for fraud was correct so as to cast onus of disproving fraud upon importer. *Vitelli & Son v. United States.* 355

4. *Invention.* As between two patentees, he of prior ap- plication and patent is presumptively prior inventor. *Sym- ington Co. v. National Castings Co.* 383

5. *Knowledge of Law.* That consignee accepting delivery of goods understood carrier could not accept less than tariff rate. *Pittsburgh &c. Ry. v. Fink.* 577

PRINCIPAL AND AGENT. See **Insurance; Public Lands, II, 3; Taxation, I, 1.**

Right of shareholder contracting as secret agent of corpora- tion to sue for full damages in his own name. See **Con- tracts, 1.**

1. Where husband, without wife's knowledge, caused na- tional bank shares to be issued and entered on books in her

PRINCIPAL AND AGENT—*Continued.*

PAGE

name, and afterwards, telling her it was a mistake, induced her to endorse them for transfer, in blank, to correct supposed error and with no intention to ratify his unauthorized act, facts could be shown, and wife not liable to assessment although shares remained in her name when bank failed. *Williams v. Vreeland* 295

2. Approval, ratification and acquiescence all presuppose existence of some actual knowledge of prior action and what amounts to purpose to abide by it. *Id.*

PRINTING. See **Procedure**, III.

PRIORITY. See **Patents for Inventions**, 5, 6.

PRIVILEGE. See **Witnesses**.

PRIVILEGES AND IMMUNITIES. See **Constitutional Law**, VI; XI, 17, (5).

PRIVITY. See **Judgments**, 4.

PROCEDURE. See **Admiralty**; **Bankruptcy Act**; **Criminal Law**; **Customs Law**; **Eminent Domain**; **Equity**; **Evidence**; **Instructions**; **Interstate Commerce Acts**; **Judgments**; **Judicial Notice**; **Jurisdiction**; **Laches**; **Limitations**; **Mandamus**; **Parties**; **Pleading**; **Presumption**.

Accounting. See **Contracts**, 1; **Equity**, 3, 7-17; **Patents for Inventions**, 1, 2.

Admissions. See **Pleading**, 4.

Allegations, as determining jurisdiction of District Court. See **Jurisdiction**, V, 2, 8.

Amendment. See **Pleading**, 5.

Appearance. See **Bankruptcy Act**, 5; **Jurisdiction**, V, 12-17.

Attorneys' fees, allowance. See **Interstate Commerce Acts**, 2.

Burden of proof. See **Evidence**, 5.

Certiorari. See **Jurisdiction**, III, 13, 17-20.

Challenges, peremptory. See **Criminal Law**, 7.

Claims, time for presenting. See **Claims**, 4; **Taxation**, II.

PROCEDURE—*Continued.*

PAGE

- Clerk's fees. See **Fees**.
- Continuance. See **Jurisdiction**, III, 19.
- Damages. See **Contracts**, 1; **Damages**; **Eminent Domain**; **Interstate Commerce Acts**, 1-5; 12-14.
- Demurrer to evidence. See **Pleading**, 7-9.
- Disclaimer. See **Patents for Inventions**, 14.
- Election. See **Constitutional Law**, XI, 9; **Equity**, 9.
- Exceptions. See **Instructions**; **Jurisdiction**, VII, 2.
- Federal question. See **Jurisdiction**, III, 3, 13, 15-19, 21; V, 9.
- Habeas corpus. *Id.*, III, 6, 7; V, 10.
- Injunction, federal and state officers. *Id.*, 1, 3; V, 5; VIII.
- Injunction, action in state court. *Id.*, V, 4, 6.
- Injunction of federal court, binding in another circuit. *Id.*, II, 1.
- Intervention. See **Equity**, 8; **Parties**, 4, 5.
- Joinder. See **Parties**, 2; **Pleading**, 1.
- Limitations, state statutes followed by federal courts in equity. See **Equity**, 6.
- Local action. See **Jurisdiction**, V, 13.
- Local law. *Id.*, III, 10; VII.
- New trial. See **Customs Law**, 4; IX, 3, *infra*.
- Nonsuit. See **Pleading**, 6-9.
- Parol evidence, to prove apparent shareholders' liability due to mistake. See **Principal and Agent**.
- Penalties, enforcement of. See **Admiralty**, 5, 6.
- Removal. See **Jurisdiction**, III, 6, 7; V, 10, 11.
- Res judicata. See **Judgments**, 5, 8; VIII, 9, *infra*.
- Satisfaction. *Id.*, 4.
- Sentence. See **Criminal Law**, 11.
- Severance. *Id.*, 6.
- Trial. *Id.*, 5-11.
- Venue. *Id.*, 4.
- Waiver. See **Instructions**, 1.
- Witnesses, self-incrimination. See **Constitutional Law**, VIII, 1-3.

I. Original Actions.

1. *Replication*, when necessary under Equity Rule 31.
Arkansas v. Mississippi 39
2. *Commissioners*, appointment of, to take proof and locate boundary. *Id.*

PROCEDURE—Continued.

PAGE

II. Assigning Error. See **Judgments, 5.**

Excessive assignments, disapproved. *Ches. & Del. Canal Co. v. United States* 123

III. Transcript of Record; Costs.

Where unnecessary matter is incorporated into transcript, court may, under Rule 8, § 1, require whole of clerk's fees and cost of printing to be borne by offending party. *Texas & Pacific Ry. v. Leatherwood* 478

IV. Scandalous Matter.

Stricken from files of this court. *Washington Post Co. v. Chaloner* 290

V. Intervention.

In the District Court and in this court by minority shareholders in a class suit. *Southern Pacific Co. v. Bogert* 483

VI. Motion to Dismiss.

When court may decide merits without passing on, in error to state court. *American Fire Ins. Co. v. King Lumber Co.* 2

VII. Conformity Act. See **Pleading, 6.**

Appellate proceedings in this court and Circuit Court of Appeals are not affected by Conformity Act, but are governed by acts of Congress, common law, and ancient English statutes. *Camp v. Gress* 308

VIII. Scope of Review. See **Jurisdiction, III.**

1. *Bill of Review.* Leave to file in District Court denied because of laches and insufficient grounds. *Lincoln Gas Co. v. Lincoln* 256

2. *Certiorari, to Circuit Court of Appeals.* Brings up whole case, including questions affecting merits, as well as jurisdiction of District Court. *Camp v. Gress* 308

3. *Direct Review under Jud. Code, § 238.* Questions of competency and sufficiency of plaintiff's averments to justify relief not before this court on direct appeal involving only jurisdiction of District Court. *Public Service Co. v. Corboy* 153

4. *Id.* Whether surrender of real property and delivery of rent notes amounted to conveyances under state law, *held*

PROCEDURE—Continued.

PAGE

matters appertaining to merits not to be considered on direct appeal under Jud. Code, § 238. *Flanders v. Coleman* 223

5. *Criminal Appeals Act*. This court must confine itself to question of construction of statute by District Court, accepting that court's interpretation of indictment. *United States v. Colgate & Co.* 300

6. *Constitutional Question; By Whom Raised*. This court will not pass upon constitutionality of act of Congress when party attacking it not entitled to raise question. *Blair v. United States.* 273

7. *Moot Question*. Whether other provisions of state law conflict with federal act not considered where provisions in question may stand alone. *Carey v. South Dakota* 118

8. *Id.* Suit to enjoin interference with cable lines as in excess of power given by Joint Resolution of July 16, 1918, becomes moot upon restoration of lines to owners, and apprehension that alleged wrongs may be repeated and revenues claimed by United States does not preserve justiciable quality of case. *Commercial Cable Co. v. Burselson* 360

9. *Superfluous Inquiry*. Whether District Court properly dismissed bill on ground of *res judicata* not decided where correct decision on merits must have resulted the same. *Louis. & Nash. R. R. v. Western Union Tel. Co.* 363

10. *Wisdom of Legislation*. This court will not pass upon. *Arizona Employers' Liability Cases.* 400

11. *Facts*. Where Court of Customs Appeals erroneously presumed collector's action in reliquidating for fraud was correct, and cast burden of disproving fraud on importer, case remanded to be tried anew by Board of General Appraisers, without inquiry by this court into adequacy of evidence of fraud. *Vitelli & Son v. United States* 355

12. *Findings of Court of Claims*. Are to be treated like verdict of jury, and this court is not at liberty to refer to evidence, any more than to opinion, for purpose of eking out, controlling or modifying their scope. *United States v. Brothers.* 88

13. *Id.* Finding of facts not essential where Court of Claims dismisses for want of jurisdiction on ground that facts al-

PROCEDURE—Continued.

PAGE

leged do not establish contract with United States. *Cartas v. United States* 545

14. *Id. Facts; Formula in Rate Case.* In testing adequacy of rates, formula to be adopted for dividing expenses common to freight and passenger service and not capable of direct allocation is question of fact. *Groesbeck v. Duluth &c. Ry.* . . . 607

15. *Id. Master's Findings.* When court need not review findings, or recite evidence. *Lincoln Gas Co. v. Lincoln* 256

16. *Facts; Judge's Finding in Jury Trial.* Finding of trial judge, supported by evidence, must stand, where both parties requested peremptory instruction. *Williams v. Vreeland* 295

17. *Facts.* This court cannot examine, on writ of error. *Tayabas Land Co. v. Manila R. R.* 22

18. *Id. Local Law; Philippine Supreme Court,* will be presumed to have considered and weighed testimony and commissioners' report in condemnation case; and its construction of local statute is accepted. *Id.*

IX. Disposition of Case. See VIII, 11, *supra*.

1. *Technical Error.* In cases from federal courts, this court may enter judgment as nature of case requires, without regard to technical errors, etc., which do not affect substantial rights of parties, Jud. Code, § 269, as amended. *Camp v. Gress* 308

2. *Harmless Error. Reversal in Part.* In action on joint contract, error in assuming jurisdiction and rendering judgment as to all obligors will not necessitate reversal as to those properly included, if their interests could not have been prejudiced. *Id.*

3. *Judgment Absolute or New Trial.* Where bill charging both statutory and common-law liability was dismissed on plaintiff's proofs, and Court of Appeals directed decree against defendant on ground that common-law liability was established, defendant not entitled to new trial on ground that issue was not considered as involved in District Court. *Bowerman v. Hamner* 504

PROCEDURE—Continued.

PAGE

4. *On Merits or on Jurisdiction.* Erroneous judgments directly affecting United States reversed on merits, rather than for want of jurisdiction. *Northern Pac. Ry. v. North Dakota* 135
Dakota Cent. Tel. Co. v. South Dakota 163
Cf. Macleod v. New England Tel. Co. 195, 199
5. *Without Prejudice.* Adverse decree in rate case modified to be without prejudice to new suit, in which complainant may show, as result of practical test, whether rate is confiscatory under new conditions. *Lincoln Gas Co. v. Lincoln* 256
6. *Id. Moot Case.* Dismissal of bill for want of equity by District Court, amounting to rejection of asserted rights, held to necessitate reversal with directions to dismiss without prejudice and without costs, where, after appeal to this court, case became moot. *Commercial Cable Co. v. Burleson* 360
7. *Doing Equity.* Decree holding majority shareholder trustee for minority should be so framed, for execution, as to avoid undue hardship to defendant. *Southern Pac. Co. v. Bogert* 483

PROCESS, SERVICE OF. See **Jurisdiction**, V, 12-17.

PUBLICATION. See **Criminal Law**, 8, 10; **Libel**.

PUBLIC CONTRACTS. See **Contracts**, 3, 4.

PUBLIC LANDS:

I. Coal Lands; Alaska.

1. What constitutes opening or improvement of a "mine," within Act of 1904; construction by Secretary. *Alaska Smokeless Coal Co. v. Lane* 549
2. Examination of facts as to work done, and finding by Secretary that it was done for prospecting purposes held not arbitrary and not reviewable by mandamus. *Id.*
3. Secretary's discretion not foreclosed by rulings in earlier cases. *Id.*

PUBLIC LANDS—Continued.

PAGE

II. Railroad Grants; Swamp Land.

1. *Timber.* Act of 1875, granting right to take for construction, strictly construed; portions of trees remaining after extraction of ties may not be appropriated to compensate for tie-cutting. *Caldwell v. United States* 14
2. *Id.* Grant of "timber" for construction is not a grant of "trees." *Id.*
3. *Id.* Section 8 of Act of 1891, giving right to take timber for agricultural and other purposes, inapplicable to persons appropriating and selling surplus parts of trees cut for railroad under Act of 1875. *Id.*
4. *Id. Permission of Agent.* Right to take timber under Act of 1875 cannot be enlarged by permission from official of Land Office. *Id.*
5. *Place Lands; Claim of State.* Odd sections within primary limits of Northern Pacific grant of 1864, which, when line opposite them was definitely located, were claimed by Oregon under Swamp Land Acts, were excepted from grant of place lands, whether claim of State was valid or not. *Northern Pac. Ry. v. McComas* 387
6. *Id. Erroneous Patent.* Issued for such lands, as place lands, gave to railroad only legal title, leaving equitable title in United States. *Id.*
7. *Id. Possession under State.* Possession, cultivation, etc., under conveyance from State based on unapproved selection as swamp lands, conveys no title. *Id.*
8. *Id. Protecting Possession.* Lands being claimed by individual under Swamp Land Act, and by railroad under lieu selections, courts cannot anticipate adjudication by Land Department, beyond protecting possession lawfully acquired. *Id.*
9. *Id. Questions for Land Department.* Whether lands come within Swamp Land Act and whether so occupied and appropriated as not to be subject to lieu selection by railroad. *Id.*
10. *Id. Discretion of Secretary.* Approval of lieu selection involves exercise of discretion. *Id.*

PUBLIC LANDS—*Continued.*

PAGE

11. *Id.* He may reject selection and hold title in United States for *bona fide* occupant, who has reclaimed and improved at large cost. *Id.*

12. *Id. Limitations.* Where land claimed by individual under Swamp Land Act was patented pending suit to railroad under lieu selection, occupant can not avail of statute of limitations or attack patent collaterally. *Id.*

13. *Id. Reconveyance; Acceptance.* Where railroad reconveys land erroneously patented as place lands and selects them as lieu lands, fact that land officers entertain selections and pass one of them to patent establishes acceptance of reconveyance by United States. *Id.*

PUBLIC MONEYS. See **United States.**

PUBLIC OFFICERS. See **Officers.**

PUBLIC RECORDS. See **Evidence**, 1, 2.

RAILROADS. See **Carriers; Employers' Liability Act; Interstate Commerce Acts; Mail Cars.**

Tracks; regulation. See **Constitutional Law**, III, 7; IV, 3; XI, 33.

Crossings; safety devices. *Id.*, XI, 32.

Right of way; condemnation for use of telegraph. *Id.*, III, 8; XI, 31.

Lessee; exemption from tax liability. See **Franchises**, 1-4.

Car distribution. See **Interstate Commerce Acts**, 1-5.

Passenger fares. See **Carriers**, 2-4.

Federal control of intrastate rates. See **Federal Control Act.**

Formula in rate case. See **Procedure**, VIII, 14.

Land grants. See **Public Lands**, II.

RATES. See **Carriers**, 1-4; **Constitutional Law**, IV, 1; VII, 1, 2; XI, 23-26; **Interstate Commerce Acts**, 7-11.

Formula in rate case. See **Procedure**, VIII, 14.

Federal control over rates of railroads, telegraphs and telephones. See **Federal Control Act; Telephones and Telegraphs.**

RATIFICATION. See **Principal and Agent**, 2.

- REAL PROPERTY.** See Eminent Domain; Indians; PAGE
Mortgages; Public Lands; Taxation, III, 2-5.
Transfer; preference. See Bankruptcy Act, 4.
- REBATES.** See Interstate Commerce Acts, 6.
- REFUNDING ACTS.** See Taxation, II.
- RELIQUIDATION.** See Customs Law.
- REMAINDER INTEREST.** See Indians, 1-3.
Action on bond of life tenant to secure. See Jurisdiction,
V, 7.
- REMAND.** See Procedure, VIII, 11, 13; IX.
- REMOVAL.** See Jurisdiction, III, 6, 7; V, 10, 11.
- RENTS.** See Indians, 3, 8.
- REPARATION.** See Interstate Commerce Acts, 1-5.
- REQUISITION.** See Shipping Board.
- RESIDENTS.** See Constitutional Law, VI, 2, 3; XI, 4, 34, 35,
39, 40; Jurisdiction, V, 7, 12-17; Taxation, I.
- RES JUDICATA.** See Judgments; 5, 8; Procedure, VIII, 9.
- RESTRAINT OF TRADE.** See Anti-Trust Act.
- REVENUE.** See Customs Law; Taxation.
- REVERSAL.** See Procedure, IX.
- REVIEW, BILL OF.** See Procedure, VIII, 1.
- RIGHTS OF WAY.** See Constitutional Law, III, 8; Eminent Domain, 2-6; Public Lands, II.
- RIVERS.** See Boundaries.
- ROYALTIES.** See Indians, 3, 8; Patents for Inventions, 1.

RULES:

PAGE

Supreme Court, rule 8, § 1. See **Procedure**, III.
Equity rule 31. *Id.*, I, 1.

SAFETY APPLIANCE ACT. See **Mail Cars**.

SAFETY DEVICES. See **Carriers**, 6.

SALES. See **Taxation**, III, 8, 9.

SATISFACTION. See **Judgments**, 4.

SCANDALOUS MATTER:

Stricken from files of this court. *Washington Post Co. v. Chaloner*..... 290

SECRETARY OF AGRICULTURE. See **Constitutional Law**, III, 4.

SECRETARY OF THE INTERIOR. See **Indians**, 3, 5-9;
Public Lands, I; II, 10, 11.

SELECTIVE SERVICE ACT. See **Criminal Law**, 8, 10.

SELF-INCRIMINATION. See **Constitutional Law**, VIII,
1-3.

SENTENCE. See **Criminal Law**, 11.

SERVICE OF PROCESS. See **Jurisdiction**, V, 12-17.

SERVICES. See **Carriers**, 3; **Interstate Commerce Acts**,
1-5.

SEVERANCE. See **Criminal Law**, 6.

SHAREHOLDERS. See **Contracts**, 1; **Corporations**; **Equity**,
7-17; **Principal and Agent**.

SHERMAN ACT. See **Anti-Trust Act**.

SHIPPING. See **Admiralty**; **Shipping Board**.

SHIPPING BOARD:

PAGE

1. *Act of 1916 and Amendments; Libel in District Court.* Jurisdiction to libel vessel requisitioned by United States and operated through Emergency Fleet Corporation and private firm as agents of Board in coastwise trade. *The Lake Monroe* 246
2. *Id. President; Powers Delegated.* No presumption that powers delegated by Act of 1917 should be exercised arbitrarily or that President by order of July 11, 1917, intended to vest absolute powers in Board or Corporation. *Id.*
3. *Id.* In view of establishment of Board and Corporation as government agencies, broadly empowered and definitely restricted under Shipping Act, and of mention of that act in Act of 1917, presumed that Congress expected they would be used under latter act, and that President, in employing them thereunder, did so because of powers and restrictions, already provided. *Id.*
4. *Id.* This is confirmed by Acts of July 15, 18, 1918, read with House and Senate reports. *Id.*
5. *Id. Charter.* Words "purchased, chartered, or leased," cover contract for temporary use of vessel or its services not amounting to demise. *Id.*
6. *Id. Merchant Vessel,* employed "solely as merchant vessel," though assigned to New England coal trade when Government was rationing coal supply as war measure. *Id.*

SIXTH AMENDMENT. See **Constitutional Law, IX.**

SOUTH DAKOTA:

Law forbidding shipment of migratory birds, not inconsistent with federal act and regulations of Department of Agriculture, sustained. *Carey v. South Dakota* 118

STATE BANKS. See **Franchises, 5.**

STATES. See **Boundaries; Constitutional Law; Jurisdiction; Statutes, 2, 3, 6; Taxation, III.**
 Citizenship. See **Constitutional Law, VI; XI, 38.**
 Conformity Act. See **Pleading, 6; Procedure, VII.**
 Swamp lands. See **Public Lands, II, 5 et seq.**

STATES—Continued.

PAGE

Enjoining officials in federal court. See **Jurisdiction**, V, 5.
Police regulations and taxation, as applied to railroads, telegraphs and telephones. See **Federal Control Act; Telephones and Telegraphs**.

STATUTE OF LIMITATIONS. See **Laches; Limitations**.

STATUTES. See **Admiralty; Anti-Trust Act; Bankruptcy Act; Claims; Constitutional Law; Criminal Law; Customs Law; Employers' Liability Act; Equity**, 4, 5; **Federal Control Act; Franchises; Indians; Interstate Commerce Acts; Jurisdiction; Limitations; Mail Cars; National Banks; Patents for Inventions; Public Lands; Shipping Board; Taxation; Telephones and Telegraphs; Witnesses**.

See also Table of Statutes Cited, at front of volume.

1. *Strict Construction.* General Right of Way Act of 1875 construed strictly in favor of United States. *Caldwell v. United States*. 14
2. *Separable Part.* Whether other provisions of state law conflict with federal act not considered where provisions in question may stand alone. *Carey v. South Dakota* . . . 118
3. *Id. Context.* Declaration of Federal Migratory Bird Act that birds within custody of United States limited by context to prohibition of destruction or taking. *Id.*
4. *Presumption; Ordinary Meaning.* That word "property" in Income Tax Act 1913 used with its ordinary sense, nothing contrary appearing. *De Ganay v. Lederer* 376
5. *Presumption; Delegated Powers.* No presumption that Congress intended powers given by Act of 1917, authorizing requisition of private shipping, should be exercised by President arbitrarily, or that his order delegating powers for exercise to Shipping Board intended to vest absolute powers in Board; this is confirmed by later acts and House and Senate reports. *The Lake Monroe* 246
6. *Primary Intent.* In acts authorizing federal control of railroads, telegraphs and telephones, for war purposes, reservation of States' police or taxing power construed in subordination to primary purpose and as not reserving from

STATUTES—Continued.

	PAGE
general government right to fix intrastate rates. <i>Northern Pac. Ry. v. North Dakota</i>	135
<i>Dakota Cent. Tel. Co. v. South Dakota</i>	163
<i>Kansas v. Burleson</i>	188
<i>Burleson v. Dempcy</i>	191
<i>Macleod v. New England Tel. Co.</i>	195

7. *Id. Continuance.* Provision for complete change to federal control being clear, no presumption that state control over intrastate rates was to remain unchanged because it previously existed. *Northern Pac. Ry. v. North Dakota* . . 135
 See Dakota Cent. Tel. Co. v. South Dakota 163

STOCKHOLDERS. See **Contracts, 1; Corporations; Equity, 7-17; Principal and Agent.**

STREETS AND HIGHWAYS:

Rights of railroad in respect of operation of tracks. See **Constitutional Law, III, 7; IV, 3; XI, 33.**

SURETY. See **Bonds, 3.**

SURPLUS LANDS. See **Indians, 4, 5.**

SWAMP LANDS. See **Public Lands, II, 5-13.**

TARIFFS. See **Interstate Commerce Act, 6, 7.**

TAXATION. See **Customs Law; Gas Companies, 4.**

State taxation, as applied to railroads, telegraphs and telephones, requisitioned for war purposes. See **Federal Control Act; Telephones and Telegraphs.**

Tax on telegraph poles and wires. See **Constitutional Law, III, 6; XI, 21, 22, 37.**

Improvement certificates; action against municipality to compel satisfaction. See **Equity, 3.**

Situs of stocks, bonds and mortgages, for taxation. See *infra*, I.

I. Income Tax Act, 1913.

1. *Stocks, Bonds and Mortgages, "Property."* Where owned by alien nonresident and in hands of agent in this country empowered to sell, transfer, and to invest and reinvest pro-

TAXATION—Continued.

PAGE

ceeds, income is taxable as income from property owned in United States by person residing elsewhere. *De Ganay v. Lederer* 376

2. *Id.* Bonds, mortgages and certificates of stock are ordinarily regarded as "property"; and that term is presumed to have been used in statute with its ordinary sense. *Id.*

3. *Id. Situs.* Such property may have situs for taxation at place other than owner's domicile. *Id.*

II. Inheritance Taxes. Claims for Refunds.

1. *Contingent Interest*; payment without protest; time for presenting claim. *Coleman v. United States* 30

2. *Id.* Claims presented to Commissioner under Act of 1902, for tax erroneously collected, and satisfied in part through suit against collector, need not be presented anew to obtain, as to residue, benefit of Act of 1912. *Sage v. United States* 33

3. *Id.* Act of 1912; time for presenting claims; limitation on suit in Court of Claims. *Id.*

4. *Id. Satisfaction*, by United States of judgment against collector does not prevent suit against United States for remainder of erroneous tax. *Id.*

III. State Taxation. See Statutes, 6.

1. *Inheritance Taxes.* New Jersey law, resulting in greater taxes for transfer of property in State of nonresident than would have been assessed for transfer of equal amount of property of resident decedent, *held* not to infringe privileges and immunities provision of Art. IV, or the like provision, or the equal protection or due process clauses, of Fourteenth Amendment. *Maxwell v. Bugbee* 525

2. *Id.* Judgment holding shares within general succession tax of State, though tax was opposed as reaching real property outside of State, does not involve validity of tax statute or authority exercised under State, within Jud. Code, § 237. *Dana v. Dana* 220

3. *Local Improvement Assessment.* Notice to owners of formation and bounds of district not necessary when estab-

TAXATION—Continued.

PAGE

- lished by legislative authority; *contra*, when established by administrative or quasi-judicial authority. *Hancock v. Muskogee* 454
4. *Id. Apportionment*. No necessity for hearing when mode prescribed by legislature. *Id.*
5. *Id. Benefits*. Method of taxing property benefited, and manner of distribution (according to frontage, values or area), within legislative discretion. *Id.*
6. *Railroad Charters; Tax Exemptions*. Provisions of charters to Southwestern and Muskogee railroads *held* to extend to lessee. *Central of Ga. Ry. v. Wright* 519
7. *Bank Charter*. Provisions not inconsistent with general power of State to cause affairs to be examined and reported on and to exact assessment for maintenance of state banking department. *Bank of Oxford v. Love* 603
8. *License Tax*. Tax on right to manufacture within city, computed on amount of sales of goods so manufactured, is a tax upon business of manufacture within city, and not upon sales. *American Mfg. Co. v. St. Louis*. 459
9. *Id. Foreign Corporations; Interstate Commerce*. Such tax when computed on sales of goods manufactured in city, but removed, and afterwards sold, beyond States, does not burden interstate commerce or deprive of property without due process. *Id.*

TELEPHONES AND TELEGRAPHS. See **Constitutional Law**, III, 6; VII, 5; XI, 21, 22, 37; **Eminent Domain**, 2-6.

1. Joint Resolution, authorizing President to take possession of telephones and telegraphs, for the national security and defense, includes plenary control of their intrastate rates, and is constitutional. *Dakota Cent. Tel. Co. v. South Dakota*. 163
Kansas v. Burleson. 188
Burleson v. Dempcy. 191
Macleod v. New England Tel. Co. 195
2. The President's powers thereunder, and the powers exercisable under his proclamation by the Postmaster General. *Id.*

TIMBER. See **Public Lands**, II, 1-4.

PAGE

TIME. See **Laches; Limitations.**

TITLE. See **Indians**, 10, 11; **Interstate Commerce Acts**, 10; **Public Lands**, II, 6, 7.

TORTS. See **Contracts**, 4.

TRACKS. See **Constitutional Law**, III, 7; IV, 3; XI, 32, 33.

TRADE-MARKS:

Manufacturer of beer cannot claim exclusive right to use brown bottles with brown labels; but their adoption may contribute to wrongful deception if combined with imitative inscription. *Schlitz Brewing Co. v. Houston Ice Co* 28

TRADING-WITH-ENEMY ACT. See **Criminal Law**, 4.

TRANSCRIPT. See **Procedure**, III.

TREASURY DEPARTMENT. See **Claims**, 3, 4.
Books, as evidence. See **Evidence**, 1.

TRIAL. See **Criminal Law**, 5-11; **Customs Law**, 4; **Instructions; Procedure**, IX, 3.
Nonsuit. See **Pleading**, 6-9.

TRUST PATENTS. See **Indians**, 9.

TRUSTS AND TRUSTEES. See **Bankruptcy Act; Equity.**

UNFAIR COMPETITION. See **Anti-Trust Act; Trade-marks.**

UNITED STATES. See **Claims; Contracts**, 2-4; **Customs Law; Federal Control Act; Limitations**, 1, 2; **Mail Cars; Payment; Public Lands; Shipping Board; Taxation**, I; II; **Telephones and Telegraphs.**
Citizenship. See **Constitutional Law**, VI; XI, 38.
Relation of, to suits against collector to recover taxes. See **Taxation**, II.
Enjoining officials, in state court. See **Jurisdiction**, VIII.

- UNITED STATES**—*Continued.* PAGE
- Books of Treasury Department as evidence. See **Evidence**, 1.
- In suit to collect dividends on corporate shares, United States acts in governmental capacity. *Ches. & Del. Canal Co. v. United States* 123
- UNITED STATES SHIPPING BOARD.** See **Shipping Board**.
- VENUE.** See **Criminal Law**, 4.
- VERDICT.** See **Criminal Law**, 11; **Interstate Commerce Acts**, 1, 5; **Pleading**, 8, 9.
- VESSELS.** See **Admiralty**; **Claims**, 2; **Shipping Board**.
- VIRGINIA:**
- Nonsuit, under Virginia practice. See **Pleading**, 6-9.
- WAIVER.** See **Insurance**; **Instructions**, 1.
- WAR:**
- War power of Congress. See **Constitutional Law**, VII; **Statutes**, 6.
- Construction of laws enacted under war power. See **Federal Control Act**; **Shipping Board**; **Telephones and Telegraphs**.
- WARRANTY.** See **Indians**, 11; **Insurance**.
- WAR REVENUE ACT, 1898.** See **Taxation**, II.
- WAR VESSELS.** See **Claims**, 2.
- WATERS.** See **Admiralty**; **Boundaries**; **Constitutional Law**, III, 8, 9.
- WITNESSES.** See **Constitutional Law**, VIII, 1-3.
- Subpoenaed in grand jury investigation of violations of Corrupt Practices Act, may not question power of Congress to enact provisions for regulation of primary elections of candidates for office of United States Senator. *Blair v. United States* 273

751

PAGE

WRIT OF ERROR. See Jurisdiction; Procedure.